

**BOARD OF COUNTY COMMISSIONERS**

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March 07, 2012

DAVE PAWLACZYK  
WINDHAM GROUP, LLC  
36400 WOODWARD AVE  
SUITE 205  
BLOOMFIELD HILLS MI 48304

Re: HERONS GLEN  
Senate Bill 2156 Extension (F)  
DRI2012-00010

Dear DAVE PAWLACZYK:

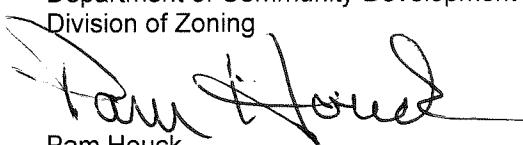
Lee County acknowledges receipt of your request for extension of the build out date, commencement and completion dates, and any required mitigation as provided for under Florida Statute 252.363. The extension provided under Florida Statute 252.363 is the result of Office of the Governor Executive Order Number 11-128 (extended by 11-172 and 11-202). Pursuant to that Executive Order and Florida Statute 252.363, Lee County recognizes the length of time related to this extension is for a period of 126 days plus 6 months.

Lee County will not issue a codified Amendment to the DRI Development Order at this time. In the future, if the DRI Development Order is amended, Lee County will amend the DRI Development to provide for the extension. Please keep a copy of this letter for your records and submit this letter with the next application for a Notice of Proposed Change for this DRI so that the time extension can be included in the amended DRI Development Order. If the DRI Development Order is not amended before the expiration date, please ensure you have a copy of this letter to prove entitlement to the extension provided under this Executive Order.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Department of Community Development  
Division of Zoning



Pam Houck  
Director

cc: Donna Marie Collins, Chief Assistant County Attorney

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

WHEREAS, an application was filed by the property owner, Robert J. Peters, to amend the Herons Glen DRI; and

WHEREAS, a public hearing was advertised and held on December 6, 2000 with the record left open until December 22, 2000 for written submissions, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DRI964596 and DCI964597; and

WHEREAS, a second public hearing was advertised and held on February 5, 2001 and continued to February 27, 2001 before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to amend the Herons Glen DRI development order #6-8687-77 to:

1. a) change the name of the development from Del Vera to Herons Glen DRI; and  
b) add 20 acres to the DRI to accommodate a wastewater treatment plant expansion; and  
c) increase commercial square footage from 10,000 to 12,000 square feet; and  
d) add an additional 18-hole golf course; and  
e) extend the buildout and termination date to May 3, 2010 (for a total extension of 12 years);and  
f) modify the phasing schedule; and  
g) modify Map H to reflect the changes noted above.

2. Determine whether the proposed changes constitute a substantial deviation under the provisions of §380.06(19), Florida Statutes, requiring further Development of Regional Impact review.

3. Amend the existing Residential Planned Development (RPD) zoning to increase the building height for the clubhouse from 35 feet to 45 feet, increase the internal commercial land area by 2,000 square feet; change a portion of an area previously set aside as residential development to allow an additional 18-hole golf course to be incorporated into the residential uses; and incorporate other changes proposed in the DRI NOPC such as the increase in acreage for the Red-Cockaded Woodpecker Preserve areas.

4. Rezone 20± acres of land from AG-2 (Agricultural) to Residential Planned Development

(RPD) to allow an Essential Services, Group II use, Wastewater Treatment Plant only, and outdoor storage of recreational vehicles use.

The property is located in the Suburban, Outlying Suburban and Wetland Land Use Categories and legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

#### SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. The development of this project must be consistent with the two-page Master Concept Plan entitled "Herons Glen DRI Master Concept Plan," with pages 1 and 2 stamped "Printed December 5, 2000" except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local development order Approval, 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.
2. The following limits apply to the project and uses:
  - a. Schedule of Uses

#### Residential "R"

Administrative Offices

Dwelling units (maximum of 2,700 only): limited to 1,620 detached conventional single family homes, 540 zero lot line homes and 540 townhouse units

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

Excavations, water retention (as further limited by other conditions)

Fences, Walls

Home Occupation (in compliance with LDC §34-1771 *et seq.*)

Real Estate Sales Center limited to the residential uses within Herons Glen

Recreational Facilities, Personal and Private On-Site

Signs (in conformance with LDC Ch. 30)

Temporary Construction Trailer

**Residential Open Space“RO” (Open Space, Golf Course, and Buffers)**

Recreation Facilities, Private On-site and Private Off-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 those uses permitted by right or by Special Exception in the  
CN-1 and CN-2 plus the following (as permitted by Resolution Z-88-069, Z-92-060,  
PD-96-018):  
Essential Services  
Essential Service Facilities, Groups I and II  
Entrance Gates and Gatehouses  
Excavation, Water Retention  
Fences and Walls  
Outdoor seating for the Consumption on Premises, in compliance with LDC §34-1261 *et  
seq.*  
Golf Course Maintenance Facility  
Personal Services, Group II  
Health Clubs  
Massage Establishments (as further limited by other conditions)  
Real Estate Sales Center limited to units within Herons Glen RPD  
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 Uses, limited to construction trailers (subject to compliance with LDC Ch. 34)

**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**

Attachment H to the Staff Report (attached as Exhibit D)

3. The following conditions address Environmental concerns, and are intended to supplement the conditions and provisions contained within the DRI Development Order:
  - a. The Red-Cockaded Woodpecker (RCW) management plan entitled “Attachment B: Revised Red-Cockaded Woodpecker Monitoring and Management Plan for the Herons Glen DRI (f.k.a. Del Vera, Villages of Nantucket and Del Tura North DRI),

Lee County Florida" dated July 2000 is hereby adopted with the following conditions:

- (1) Prescribed burns of the RCW Preserves must commence within three years of the completion of the initial exotic eradication activities in the RCW preserve, and must be completed on the entire site within three years of that date, or no later than 2007; and
  - (2) All burns must occur between January and March to avoid the RCW nesting season; and
  - (3) The Division of Planning - Environmental Sciences staff must be notified in writing of each scheduled burn at least 15 days prior to the prescribed burn.
- b. The wetland management plan entitled "Attachment C: Revised Wetlands Management Plan for the Herons Glen DRI (f.k.a. Del Vera, Villages of Nantucket, and Del Tura North)" dated July 2000 and counter stamped August 14, 2000 is approved with the following conditions:
- (1) Prior to any invasive exotic removal or control, the Division of Planning - Environmental Sciences Staff must be notified in writing of the commencement and estimated completion dates, the removal method proposed, and the herbicide to be applied. The exotic removal method and herbicide are subject to Environmental Sciences Staff review and approval; and
  - (2) An appropriate herbicide must be applied to the trunk immediately following the cutting of any invasive exotic vegetation; and
  - (3) The semi-annual exotic vegetation maintenance must occur in March and October. The exotic vegetation maintenance must commence in March 2001 for a minimum duration of three years as specified in the wetlands management plan, and then on an as-needed basis thereafter; and
  - (4) Monitoring reports of exotic vegetation within the RCW preserve must include at a minimum one photo from each of the four units prior to each semi-annual maintenance and one month following the completion of the exotic maintenance. The monitoring reports must be submitted to Environmental Sciences Staff in May and December each year. The pine planting monitoring report must be submitted as part of the May monitoring report.
- c. The irrigation line installed in the pine planting area within the preserve must be removed prior to the 2001 Red-Cockaded Woodpecker nesting season (April-June). The May 2001 monitoring report must document the removal of the irrigation line.

4. Commercial uses within the project are limited to a maximum of 12,000 square feet, and must be located within the club house(s)/country club(s); NO freestanding commercial uses are permitted within the DRI. The commercial uses, with the exception of the golf course(s), are limited to the residents of Herons Glen. The commercial uses are subject to the following additional conditions:
  - a. Signs for commercial uses other than project sales may not be visible from the perimeter of the project and must comply with LDC Chapter 30.
  - b. Outside display or storage of goods for retail sale is prohibited.
  - c. Real estate sales activity and model homes are limited to that designated phase of the project only. Model Home uses must terminate upon the sale of the last unit in the designated project or phase or 12 months after the issuance of the last certificate of occupancy for the designated project or phase, whichever occurs first. Real Estate sales and model homes uses are further limited to the termination date of the specific phase, i.e., these uses must cease after 2005 for Phase 1 and 2010 for Phase 2.
  - d. No commercial land use or commercial occupancy of a structure may commence until a substantial proportion of the residential uses or occupancies have begun. The following table indicates the maximum proportion of the total permitted commercial floor space that may be occupied for a minimum proportion of residential land uses commenced.

PHASING LIMITS  
[Proportions are cumulative from left to right.]

Residential use (minimum)	25%	50%	75%	100%
Commercial use (maximum)	25%	50%	100%	

- e. These conditions are in addition to and not in lieu of any other general condition or regulation applicable to a residential planned development.
5. Uses on the 20-acre tract being added to this project are limited to Essential Services, Group II, intended to serve this project only, and Storage, Enclosed, limited to the storage of RVs, boats and similar vehicles owned by residents of Herons Glen.
6. All outdoor storage must be located no closer than 100 feet from a project perimeter property line, and must be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement. A Type "B" buffer must be installed around the perimeter of the storage area. On-site indigenous vegetation may

count toward the vegetative requirements of that buffer.

7. The town house buildings must be located interior to the project. A single-family portion of the project, with no less than one "row" of single-family units, golf course fairway(s), lake(s), or conservation area(s) at least 100 feet in width must separate town house buildings from any perimeter property line.
8. Model units and homes are permitted in compliance with the following conditions:
  - a. Each model must be a unique example. Multiple examples of the same unit are not permitted; and
  - b. All model sites must be designated on the development order plans; and
  - c. Prior to model home construction, the lots upon which model homes will be constructed must be shown on a preliminary plat. The preliminary plat must be filed concurrently with the local development order application. The model homes must comply with the setbacks set forth in the property development regulations for this project for the specific residential type; and
  - d. Dry models are prohibited.
9. Buildings exceeding 35 feet in height must maintain additional building separation or additional building setbacks as regulated by LDC §34-2174(a) and LDC §34-935(e)4.
10. Regarding the massage establishment (from PD-96-018):
  - a. The massage establishment uses are limited to Herons Glen residents and their guests; and
  - b. Only one licensed massage establishment is permitted within each clubhouse.
11. Transportation mitigation must be provided as outlined in the DRI Development Order. However, site-related improvements and additional conditions may be required at the time of local development order in accordance with the provisions of the LDC.
12. Approval of this rezoning 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), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.
13. No excess excavated material may be removed from the site (except as allowed by previous deviation approval) unless the developer can demonstrate to the Director of Community Development that the material to be removed: a) is unsuitable material that

cannot be used on-site and b) the material must be excavated to meet the minimum requirements to provide a water management system on the site. The purpose of this condition is to prohibit the voluntary creation of excess fill material for use off-site.

14. Prior to the issuance of a local development order for any portion of the project, the developer must submit all hydrologic and hydraulic data related to the flow-way and all bypass drainage to the Division of Natural Resources Management for review and approval.
15. This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development or subsequent amendments thereto.
16. A Type "E" buffer must be installed completely around the perimeter of the area used for the wastewater treatment facility, and a 200-foot setback must be maintained from any residential use or property line where a residential use would be permitted.
17. All conditions or commitments made by the developer or contained in the DRI Application for Development Approval or subsequent documents, previous DRI Development Orders or subsequent amendments, and previous zoning actions not affected by this amendment, remain in full force and effect. If conflicting conditions existing between this approval and the DRI Development Order or its amendments, the more restrictive condition will apply.
18. The developer must have a separate construction access road in place prior to the beginning of Phase II (i.e., prior to development approval and permitting for the 1039th residential unit - based upon the DRI phasing schedule adopted February 27, 2001). No building permits for construction in Phase II will be issued until a separate construction access is in place. The intent of this condition is to require the alternate access to be used for all Phase II construction traffic.

The preferred alternative for the construction access road is Nalle Grade Extension. Construction of Nalle Grade Extension prior to the beginning of Phase II will be eligible for road impact fee credits in accordance with the provisions of the road impact fee regulations and the Herons Glen DRI development order.

19. POTABLE WATER/FIRE FLOW

- a. No development orders for residential or commercial structures will be issued by the County until the Herons Glen development connects into the Lee County Utilities' (LCU) 16 inch potable water main extension on the north side of Nalle Grade Road at the southeast corner of the Herons Glen DRI project. This requirement will not prohibit the issuance of a development order for the waste water treatment plant expansion.
- b. The developer must pay one-half of the actual cost of constructing the 16 inch main extension from the current end/trunk point to the southeast corner of Herons Glen. (Estimated total cost is \$300,000.00.) Payment is due at the time LCU presents a



written request to the developer detailing the actual cost. The developer, at developer's option, may choose to pay this obligation over a period of time that does not exceed five years, at an interest rate of no greater than five percent. Developer must notify LCU as to its exercise of this option in writing and include a proposed payment schedule. Failure to timely pay this obligation in full will result in a denial of any further building permits.

- c. The County anticipates that the 16 inch water main will be constructed and available for connection by Herons Glen on or before April 1, 2002. The County has committed to use good faith efforts in acquisition of the necessary property rights and construction of the water main within this time frame. However, failure of the County to achieve this proposed goal due to circumstances beyond its reasonable control will not constitute the basis for any civil action against the County by the developer or residents of Herons Glen.
- d. An additional purpose of this condition is to prohibit the use of blue hydrants and residential sprinklering of buildings to substantiate local development order approval for structures after March 1, 2001. However, this condition will not prevent the developer from obtaining building permits for construction of Units 7, 8 and 9 approved prior to March 1, 2001 and recorded in the County plat books.

#### SECTION C. DEVIATIONS:

No new deviations have been sought as part of this request. All previously approved deviations, not revised by the changes and conditions herein, remain in full force and effect.

#### SECTION D. EXHIBITS:

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

- Exhibit A: The legal description and STRAP number of the property.
- Exhibit B: Zoning Map (subject parcel identified with shading)
- Exhibit C: The Master Concept Plan
- Exhibit D: Property Development Regulations (aka Exhibit H to staff report)
- Exhibit E: Second Development Order Amendment

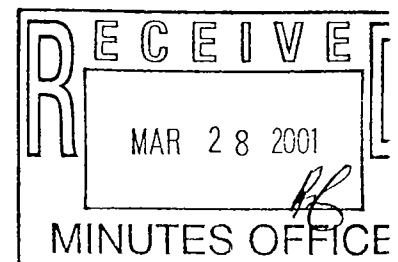
#### SECTION E. FINDINGS AND CONCLUSIONS:

- 1. The applicant has proven entitlement to the amendment by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
- 2. The amendment, as approved:
  - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
  - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
  - c. is compatible with existing or planned uses in the surrounding area; and,

- d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
  - e. will not adversely affect environmentally critical areas or natural resources.
3. The amendment satisfies the following criteria:
- a. the proposed use or mix of uses is appropriate at the subject location; and
  - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
  - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.
6. The proposed changes constitute a substantial deviation under F.S. §380.06(19). However, the applicant has successfully rebutted the presumption that the changes create new or additional unreviewed regional impacts.

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

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



DULY PASSED AND ADOPTED this 27th day of February, 2001.

ATTEST:  
CHARLIE GREEN, CLERK

BY: *Charlie Green*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *Charlie Green*  
Chairman

Approved as to form by:

*Dawn E. [Signature]*  
County Attorney's Office

**RECEIVED**  
DEC 01 1999

**LEGAL DESCRIPTION  
HERON'S GLEN**

**PERMIT COUNTER**

A parcel of land being a portion of sections 2,3,4,5 and 10, township 43 south, range 24 east, Lee County Florida, being more particularly described as follows:

COMMENCE at the northeast corner of the aforementioned section 3; thence, along the north line of the northeast one-quarter of said section 3, N89°57'30"W, 355.01 feet to an intersection with the westerly right-of-way line of the former S.A.L. Railroad and the POINT OF BEGINNING; thence, continue along the north line of the northeast one-quarter of said section 3, N89°57'30"W, 2313.55 feet to the northeast corner of the northwest one-quarter of said section 3; thence, along the north line of the northwest one-quarter of said section 3, S89°48'39"W, 2667.53 feet to the northeast corner of the aforementioned section 4; thence, along the northerly boundary of Del Vera Country Club, Unit 2 as recorded in Plat Book 50 at pages 69 through 78 of the Public Records of Lee County, Florida, and the north line of said section 4, N89°42'39"W, 3036.29 feet; thence, along the boundary of Del Vera Country Club, Unit 1 as recorded in Plat Book 46 at pages 7 through 25 of the Public Records of Lee County, Florida, for the following nine (9) courses:

1. N89°42'40"W, 2299.67 feet;
2. S89°33'20"W, 1871.76;
3. S26°03'40"E, 318.64 feet;
4. S63°56'20"W, 300.77;
5. thence along the arc of a non-tangent circular curve concave to the southwest having for its elements a radius of 7739.44 feet, a central angle of 00°42'56", a chord bearing of S26°25'08"E, an chord distance of 96.66 feet, an arc distance 96.66 feet;
6. S26°03'40"E, 1943.40 feet;
7. N63°56'20"E, 300.17 feet;
8. N26°03'40"W, 4.46 feet;
9. N89°48'47"E, 3354.47 feet;

Applicant's Legal Checked  
by *gm* 12/6/99

thence, along the east line of lands as described in Official Records Book 410 at page 690 of the aforementioned public records, S00°11'07"E, 2040.37 feet; thence, along the south line of lands described in Deed Book 224 at page 437 of the aforementioned public records, S89°48'47"W, 2698.40 feet; thence, along the northeasterly right-of-way line of Tamiami Trail (S.R. 45, US 41), S26°03'40"E, 370.00 feet; thence N89°48'47"E, 3845.26 feet; thence N00°11'13"W, 332.91 feet; thence, along the south line of lands described in Deed Book 224 at page 437 of the aforementioned public records, N89°48'47"E, 4368.87 feet to an intersection with the northerly

11/24/98-5477 Ver: 01148-UNES  
00075-002-045-0

**Naples Fort Myers Sarasota Bradenton Tampa**  
4571 Colonial Boulevard, Suite 100 Fort Myers, Florida 33912-1062 941-939-1020 941-939-7479  
[www.wilsonmiller.com](http://www.wilsonmiller.com)

WilsonMiller, Inc. — FL Lic. # LC-C000170

CASE NO: DRI964596 & DCI964597

## ***Wilson Miller***

extension of the west line of lands described in Official-Records Book 388 at page 80 of the aforementioned public records; thence, along said northerly extension and said west line, S00°02'36"W, 2451.41 feet; thence, along the north right-of-way line of Nalle Grade Road, as described in Official Records Book 1096 at page 1784 of the aforementioned public records, S89°56'45"E, 2153.08 feet; thence, along the east line of lands described in Official records Book 1516 at page 1802 of the aforementioned public records, N00°02'36"E, 2460.47 feet; thence, along the south line of lands described in Deed Book 224 at page 437 of the aforementioned public records, N89°48'47"E, 775.85 feet; thence along the westerly right-of-way line of the former S.A.L. Railroad, N11°11'01"W, 4190.51 feet to the POINT OF BEGINNING.

Said parcel contain 1130.751 acres, more or less.

AND

### EXHIBIT "A"

A Tract or parcel of land lying Section 4, Township 43 south, Range 24 east, Lee County, Florida, which tract or parcel is described as follows;

From the Southeast corner of lot 45 of Unit No.1 North Fort Myers Park according to a Plat thereof recorded in Plat Book 9 at Page 113, Public Records of Lee County, Florida, run S 89°59'E along the South Line of the lands conveyed by Deed recorded in Deed Book 224 at Page 437 of said public records and along the south line of Section No.1 Unit No.1 Lakeville, according to a plat thereof recorded in Plat Book 10, Page 48, of said public records and Section No.1 Unit 2, Lakeville according to a plat thereof recorded in Deed Book 298 at Pages 303 to 306, inclusive, of said public records for 1,940 feet to the Southeast corner of said section No.1 unit No.2 and the Point of Beginning of the Land herein described.

From said Point of Beginning continue S89°59'E along the South line of the lands conveyed by said deed recorded in deed book 224 at page 437, for 425 feet to a concrete monument at the southwest corner of the lands described in and conveyed by said deed recorded in deed book 300, page 633, of said public records: thence run N0°01'E along the west line of said lands for 2040

# ***Wilson Miller***

feet to a point in the centerline of a roadway easement 80 feet wide which point is marked by a concrete monument; thence run N89°59'W along said centerline for 500 feet to a point on a prolongation in the east line of said section No. 1 unit No. 2 Lakeville which point is 40 feet north of the northeast corner of said section No. 1 unit No. 2; thence run south along said prolongation and along the easterly boundary of said section No. 1, Unit No. 2 S0°01'W for 335 feet, S89°59'E for 60 feet, S0°01'W for 600 feet to a point of curvature; thence run southeasterly along the arc of a curve radius 236.25 feet for 131.72 thence run S89°59'E for 39.71 feet, S0°01'W for 125 feet, N89°59'W for 35.48 feet and S0°01'W for 650 feet, N89°59'W for 25 feet and S0°01'W for 205 feet to the Southeast corner of said section No.1 Unit No. 2 Lakeville and the Point of Beginning, subject to roadway easements over and along the north 40 feet and over and along the north 80 feet of the south 855 feet being an extension of Lakeville drive as shown on said plat of Section No. 1 Unit No. 2, Lakeville. Also granting an Easement for roadway purposes over and along a strip of land 40 feet in width north of and adjacent to the northern boundary of the above described lands and an easement for roadway purposes 80 feet in width extending from the westerly boundary of the above described lands westerly along the northern boundaries of said section No. 1, unit No.2 and Section No. 1, unit No. 1 of Lakeville and through lot 24 of said unit No. 1 Fort Myers Park to the Tamiami Trail (State Road No. 45).

11/24/96-5477 Vw: 01144-JAMES  
00075-022-045-0

The applicant indicates there are numerous and varied STRAP numbers which are on file and available for inspection at the Department of Community Development, 1500 Monroe St., Ft. Myers, FL

EXHIBIT A  
Page 3 of 3

# Zoning Map

Charlotte County

Charlotte County

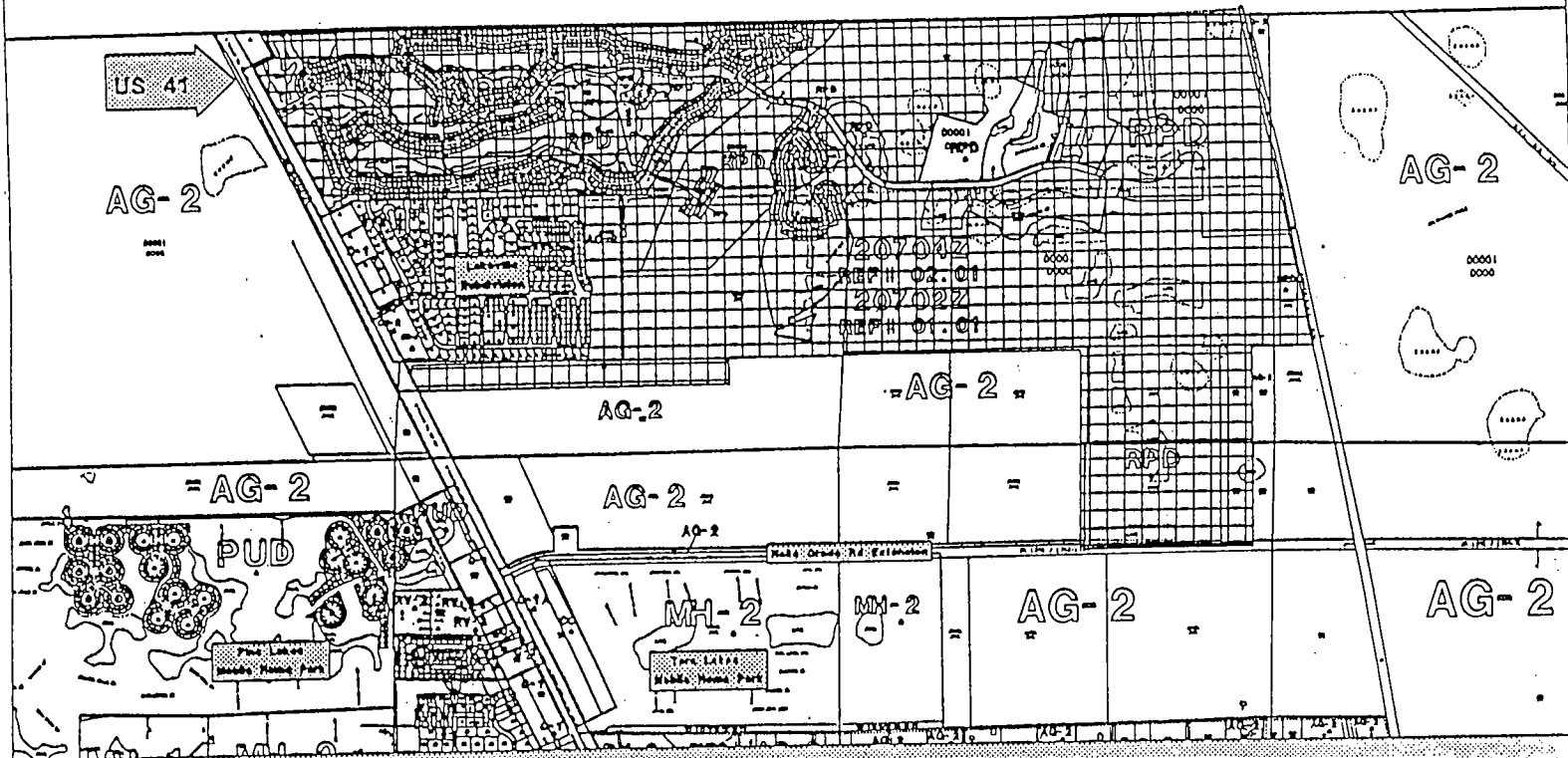


EXHIBIT B

# PROPERTY DEVELOPMENT REGULATIONS

Use	Dimensions		Setbacks (in feet)			Lot Coverage	Minimum Building Separation
	Area (sq ft)	Depth (ft)	Width (ft)	Side	Rear	Street	
Single family detached units							
type #1	6,000	100	60	5	10	20/12*	n/a
type #2	3,500	70	50	5	10	20/12	n/a
Zero lot line units (single family attached)	3,800	80	35	5/0	10	20/12*	n/a
Townhomes note: no more than 4 units/bldg	2,400	80	30	0	20**	20/12*	20 feet to any other townhouse bldg 25 feet to any single family lot line for any 1 story bldg; 40 feet to any single family lot line for any structure more than 2 stories 10 feet for accessory buildings
Country Club/Clubhouse				15	20**	20	20 feet to any townhouse bldg 25 feet to any single family lot line for any 1 story bldg; 40 feet to any single family lot line for any structure more than 2 stories 10 feet for accessory buildings

Accessory structure setbacks shall be in accordance with the LDC regarding accessory uses.

Maximum height/stories: country club/clubhouse 45 feet; all other uses 35 feet/country club/clubhouse 3 stories; all other uses 2 stories

Minimum Water Body Setback: 20 feet for all uses

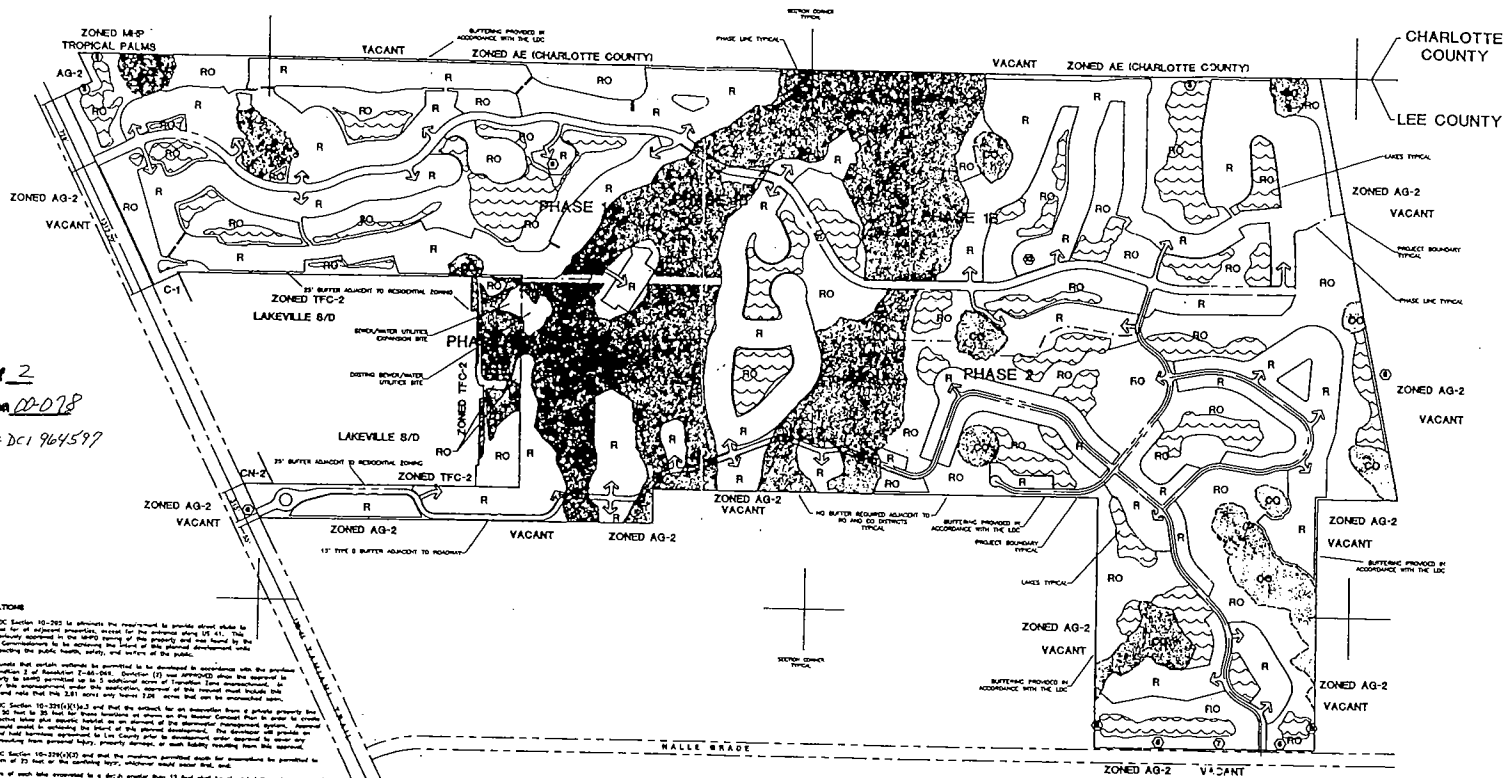
Minimum Preserve and Golf Course Setback: 10 feet

\* with side entry garages \*\* or in compliance with fire and safety access issues

## Master Concept Plan

subject to conditions in Resolution 00-028

Zoning Case # DC1964596 + DC1964597



### LIST OF ABBREVIATIONS

- [illegible]

LAND USE SUMMARY		
STATUS	DESCRIPTION	ACRES
R	RESIDENTIAL	271.42
NO	REGULATION/OPEN SPACE	677.25
NO	CONSERVATION AREAS	271.41
	TRANSPORTATION	
	MAJOR PROJECT ROAD	30.17
TOTAL ACRES		1,150.25

NOTE: STATUS OF USE ultimately will depend, in part, on the results of the following analysis.

RECREATIONAL	ACRES
SINGLE FAMILY LOTS (DETACHED)	1,600 UNITS
ZERO LOT LINE LOTS	240 UNITS
TOWNHOUSE UNITS	240 UNITS

## LAND USE TABLE.

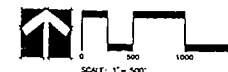
[illegible]

(\*) BULGARIAN LEADERSHIP TO BE HELD IN PLACE OF THE PRESENT LEADERSHIP

## PROPERTY DEVELOPMENT REGULATIONS

[illegible]

(C) Any structure more than five stories in height, all structures in the flat which with building structures.



SCALE: 1" = 50'

Jul 12, 2000 - 13:37:02 K:\WINNT\EXPLORER\100\2895100W1.dwg

EXHIBIT C

APPLICANT'S SIGNATURE



# SCHEDULE OF USES - PHASES 1A, 1B AND 2

## Residential "R"

### Administrative Offices

#### Dealing units:

Single-Family, Detached including Zero Lot Line Homes  
Single-Family, Attached including Townhouses  
Model Homes, Model Units and Model Display Center,  
Emitted 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 Gatehouses

#### Essential Services

#### Essential Service Facilities, Groups I and II

#### Excavations, water retention

#### Fences, Walls

#### Home Occupation

#### Model Display Center limited to the residential uses within

#### Herons Glen RPD

#### Recreational Facilities, Private On-site

#### Signs

#### Temporary Construction Trailer

## Recreation, Open Space, Golf Course, Park, Estimations and Bullies "R"

### Basketball Courts

### Biking, Hiking, Fishing Piers, Picnic Areas and Nature Trails

### Clubs, Country, Private

### Essential Services

### Essential Service Facilities, Groups I and II

### Entrance Gates and Gatehouses

### Excavations, water retention

### Fences, Walls

### Golf Courses, including

### Practice Areas and Ranges

### Restrooms

### Shelters

### Cart Barn

### COP

### Pro Shop

### Snack Bar

### Teaching facility

### Other uses normal and accessory to golf courses

### Outdoor serving of food

### Outdoor serving of alcoholic beverages

### Golf Club Houses, including

### All uses permitted by right or by special exception in the CN-1

### and DN-2 districts - limited as to location within the golf

### clubhouse, and in accordance with LDC Sec. 34-937

### Administrative Offices

### Beauty Shops

### Consumption on Premises

### Health Clubs

### Other uses normal and accessory to golf club houses

### Outdoor serving of food

### Outdoor serving of alcoholic beverages

### Pro Shop

### Restaurant

### Massage Establishments

### Specialty Retail

### Golf Course Maintenance Facility

### Irrigation Wellfields

### Landscaping Nurseries

### Parks, Private, Group I

### Project Information and Sales Centers

### Herons Glen RPD

### Recreational Facilities, Private On-Site

### Shelters, Restrooms, Showers, etc.

### Signs

### Storage, Outdoor

### Tennis, Health and Fitness, Swimming, and other recreational

### clubs

### Temporary Construction Trailer

### Temporary Construction Access roads

### Water Management Facility

## Conservation "C"

Interpretive Centers, Rain Shelters, Gazebos  
Nature and Pedestrian trails including Boardwalks, Golf, Cart  
Paths, and Jogging Paths  
Water Management Facilities, Utility and/or Roadway Crossings  
Other activities for recreation, conservation, and observation  
when approved by the Director of the Lee County Department of  
Community Development  
Signs

HERONS GLEN RPD  
MASTER CONCEPT PLAN  
SCHEDULE OF USES

PREPARED FOR: COOLIDGE FORT MYERS REALTY, L.P.

PRINTED

DEC 15 2000

Wilson Miller, Inc.

4314 Canyon Boulevard

Fort Myers, Florida 33907

Sec 14.0 Item 435 REC 14.0

Designed by: JMC/1000

Drawn by: JMC/1000

Checked by: BMB/1131

Approved by: BMB/1131

Date: 7/3/00

Scale: 1"=500'

PN: 01000-102-002

File #: 0-02000-100

Sheet 2 of 2

SECOND DEVELOPMENT ORDER AMENDMENT<sup>1</sup>  
FOR  
HERONS GLEN (FORMERLY DEL VERA)

A DEVELOPMENT OF REGIONAL IMPACT  
STATE DRI #6-8687-77  
COUNTY CASE #88-3-18-DRI(d)

LET IT BE KNOWN that, pursuant to §380.06, Florida Statutes, the Board of County Commissioners of Lee County, Florida, considered the Application for Development Approval filed by Euromerican Investment Group Ltd/Florida Sites International, regarding a Development of Regional Impact consisting of 1,136 acres, at a public hearing and adopted the original development order for the Del Tura North Country Club Development of Regional Impact (DRI) on April 25, 1988.

WHEREAS, the Del Tura North County Club DRI was amended in May 3, 1993 to change the name of the DRI to Del Vera DRI; allow detached single family residential dwelling units; eliminate the mobile home/manufactured home uses, eliminate the second golf course and expand the original golf course; change the phasing schedule and extend the buildout date to May 3, 1998; and

WHEREAS, a Notice of Proposed Change was filed by Coolidge-Fort Myers Realty, L.P., on December 1, 1999 to: (1) change the name of the development to Herons Glen DRI; (2) add 20 acres to the DRI to accommodate a waste water treatment plant expansion; (3) increase commercial square footage from 10,000 to 12,000 square feet; (4) add an additional 18 hole golf course; (5) extend the buildout and termination date to May 3, 2010 (for a total extension of 12 years); (6) modify the phasing schedule; and (7) modify Map H; and

WHEREAS, under §380.06(19), Florida Statutes, the proposed changes must be reviewed cumulatively with previous changes to determine whether they constitute a substantial deviation from the terms of the existing development order approvals; and

WHEREAS, the request to extend the buildout date a total of 12 years is presumed to create a substantial deviation under §380.06(19)(c) that may be rebutted by clear and convincing evidence; and

WHEREAS, a public hearing was advertised and held on February 5, 2001 and

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<sup>1</sup> This is a codification and restatement of all DRI development orders rendered with respect to the Del Tura North Country Club (a/k/a Del Tura; a/k/a Herons Glen) DRI, including actions taken on April 25, 1988, May 3, 1993 and February 27, 2001.

continued to February 27, 2001 before the Lee County Board of County Commissioners who gave full and complete consideration to the report and recommendations of the Southwest Regional Planning Council, the Lee County staff, the Lee County Hearing Examiner, the documents on record and the testimony of all interested parties; and

WHEREAS, the Board of County Commissioner reviewed the proposed change and concluded, based upon the evidence in the record that the proposed amendment does not constitute a substantial deviation from the original development approval.

NOW, THEREFORE, it is resolved by the Board of County Commissioners that the Development Order for the Heron's Glen (f/n/a Del Tura North Country Club) Development of Regional Impact adopted by the Board of County Commissioners on April 25, 1988 and amended on May 3, 1993 is further amended as follows.

*NOTE: New language is underlined and deleted text is struck through.*

The name of the project is hereby changed from Del Tura North Country Club to Del Vera.

## **I. FINDINGS OF FACT/CONCLUSIONS OF LAW**

A. ~~The developer proposes to develop~~ Heron's Glen is a mixed use Development of Regional Impact (DRI). The development consists of a mixed-use project with 2,700 1,620 detached single-family residential dwelling units, 540 zero lot line villas, 540 townhouses, two 18 hole golf course(s) with clubhouses on 247 acres, clubhouse(s); 40,000 a total of 12,000 square feet of retail commercial area within the clubhouses on a total of 3 acres with a maximum of 250 parking spaces, sales center, and other amenities on 436 1,151± total acres of land. A map of the development is attached as Exhibit A (Map H-3).

The legal description of the property is as follows:

A parcel of land in Sections 2, 3, 4, 5, and 10, Township 43 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the Northeast corner of Section 03, Township 43 South, Range 24 East; THENCE N.89°57'30"W. along the North line of the Northeast One Quarter (NE ¼) of said Section 03 for 355.01 feet to an intersection with the Westerly right-of-way line of the former S.A.L. Railroad and the POINT OF BEGINNING of the herein described parcel of land; THENCE continue N.89°57'30"W. along said North line for 2313.55 feet to the Northeast corner of the Northwest One Quarter (NW ¼) of said Section 03; thence S.89°48'38"W. along the North line of said Northwest One Quarter (NW ¼) for 2667.53 feet to the Northwest corner of said Section 03;

THENCE N. 89°42'40"W. along the North line of Section 04, Township 43 South, Range 24 East, for 5335.96 feet to the Northwest corner of said Section 04; THENCE S.89°33'20"W. along the North line of the Northeast One Quarter (NE ¼) of Section 05, Township 43 South, Range 24 East for 1871.76 feet to an intersection with the Northeasterly line of North Fort Myers Park according to the plat thereof as recorded in Plat Book 9, Page 113 of the Public Records of Lee County, Florida; THENCE S.26°03'40"E. along said Northeasterly line for 318.64 feet to an intersection with the Southeasterly line of Lot 3 of said plat of North Fort Myers Park; THENCE S.63°56'20"W. along said Southeasterly line for 300.77 feet to an intersection with the Northeasterly right-of-way line of Tamiami Trail (S.R. 45, U.S. 41), being a point on the arc of a circular curve concave to the Southwest, said point bearing N.63°13'24"E, from the radius point of said curve; THENCE Southeasterly along the arc of said curve having for its elements a radius of 7739.44 feet and a central angle of 00°42'56" for 96.66 feet to the point of tangency; THENCE 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 (NW ½) of Lot 24 of the aforementioned plat of North Fort Myers Park; THENCE N.63°56'20"E. along said Southeasterly line for 300.17 feet to an intersection with the aforementioned Northeasterly line of North Fort Myers Park; THENCE 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 aforementioned public records; THENCE 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 aforementioned public records; THENCE 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 at Page 437 of the aforementioned public records; THENCE S.89°48'47"W. along said South line for 2698.40 feet to an intersection with the aforementioned Northeasterly right-of-way line of Tamiami Trail; THENCE S.26°03'40"E. along said Northeasterly right-of-way line for 370.00 feet; THENCE N.89°48'47"E. for 3845.26 feet; THENCE N.00°11'13"W. for 332.91 feet to an intersection with the aforementioned South line of that certain parcel of land described in Deed Book 224 at Page 437 of the aforementioned public records; THENCE N.89°48'47"E. along said South line for 4368.87 feet to an intersection with the Northerly extension of the West line of that certain parcel of land described in Official Record Book 388 at Page 80 of the aforementioned public records; THENCE S.00°02'36"W. along said Northerly extension and along the West line of said parcel for 2553.91 feet; THENCE S.89° 56'45"E. along the South line of said parcel for 1711.91 feet; THENCE N.00°02'36"E. along the East line of said parcel for 16.72 feet to an intersection with the South line of that certain parcel of land described in Official Record Book 1516 at Page 1802 of the aforementioned public records; THENCE S.89°56'45"E. along said South line for 441.17 feet; THENCE N.00°02'36"E. along the East line of said parcel for 2546.26 feet to an intersection

with the aforementioned South line of that certain parcel of land described in Deed Book 224 at Page 437 of the aforementioned public records; THENCE N.89°48'47"E. along said South line for 775.85 feet to an intersection with the aforementioned Westerly right-of-way line of the former S.A.L. Railroad; THENCE N.11°11'01"W. along said Westerly right-of-way line for 4190.51 feet to the POINT OF BEGINNING.

B. ~~At the time of application, the~~ The subject property was is currently zoned AG-2, ~~pursuant to the authority of Chapter 125, Florida Statutes, Chapter 61-2405, Laws of Florida (Special Acts), and the Lee County Zoning Regulations of 1962, 1978, and 1986, as amended; and~~ Residential Planned Development (RPD) in accordance with the Lee County Land Development Code.

C. The Application for Development Approval is consistent with the requirements of Chapter §380.06, Florida Statutes; ~~and,~~

D. The proposed development:

1. is not in an area designated as an Area of Critical State Concern pursuant to the provisions of Chapter §380.05, Florida Statutes;

E.2. does not unreasonably interfere with the achievement of the objectives of an the adopted State Land Development Plan applicable to the area; ~~and~~

3. is consistent with the Lee County Comprehensive Plan and the Lee County Land Development Code; and

4. is located in the suburban, outlying suburban and wetlands land use categories as identified in the Lee County Comprehensive Plan.

FE. ~~The proposed development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body on January 21, 1988, has reviewed the proposed development and adopted recommendations and subsequently forwarded to Lee County pursuant to the provisions of Chapter §380.06, Florida Statutes,; and the proposed~~ The development, as proposed in the Application for Development Approval and modified by this amended Development Order, is consistent with this reports and the recommendations of the Southwest Florida Regional Planning Council in accordance with §380.06(12); and

G. ~~The application for plan amendment has been reviewed concurrently with the Application for Development Approval by the Board of County Commissioners of Lee County, Florida, the Southwest Florida Regional Planning Council, and the State Department of Community Affairs, pursuant to Chapter 163, Florida Statutes, and has been~~

~~duly adopted after notice and hearing by the Board of County Commissioners of Lee County as consistent with the Lee Comprehensive Plan; and~~

~~H. The subject property, pursuant to the Plan amendment has been reclassified from the Rural and Suburban classifications to the Outlying Suburban and Suburban classifications of the Lee Comprehensive Plan, pursuant to the authority of Chapter 163, Florida Statutes, and local ordinances duly adopted by the Board of County Commissioners of Lee County, Florida; and~~

~~I. The development is consistent with the Lee County Comprehensive Plan, as amended, and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.~~

~~J. Concurrently with the adoption of this Development Order, the subject property is being rezoned in accordance with Lee County Zoning Ordinance #86-17 as amended, and the Zoning Resolution contains additional details and conditions pertaining to Del Tura North and also provides for certain deviations from Lee County Land Development Regulations.~~

~~K.F. The proposed conditions below meet the criteria found in Section §380.06(15)(d), Florida Statutes.~~

~~G. This constitutes the second amendment to the Herons Glen DRI Development Order and is based upon the NOPC filed by Coolidge-Fort Myers Realty, L.P.~~

## **II. ACTION ON REQUEST**

~~NOW, THEREFORE, be it is resolved by the Board of County Commissioners of Lee County, in a public meeting duly constituted and assembled this Twenty-fifth (25th) day of April, 1988, that the Development of Regional Impact Application for Development Approval submitted for Del Tura North by Euromerican Investment Ltd./Florida Sites International, referred to hereinafter as "developer", is hereby ordered APPROVED, subject to the following conditions, restrictions, and limitations: that the requested amendments to the Herons Glen DRI development order are hereby APPROVED, subject to the following conditions, limitations and restrictions:~~

### **A. DRAINAGE/WATER QUALITY**

1. The surface water management system for Del Tura North shall Herons Glen must implement the design standards and water quality "best management practices" outlined in the Application for Development Approval (ADA) (response to Questions 15 and 22, Water and Drainage), and all supplemental information presented in response to sufficiency questions. These design standards and practices include, but are not limited

to the following:

- (a) The combined use of man-made lakes and seasonal ponds to provide the necessary surface water storage.
- (b) Maintenance of the existing transitional wet pine flowway as a natural drainage feature of the development.
- (c) The division of the site into nine drainage basins each containing control structures regulating water levels and discharge rates to pre-development rates.

2. The developer and his consultants ~~shall~~ must produce an acceptable method of calculating on-site basin storage for the South Florida Water Management District prior to the issuance of a final local development order. This procedure should eliminate any major site plan revisions necessitated as a result of not adequately providing enough on-site storage of stormwater.

3. Water Quality Monitoring:

- (a) The developer ~~shall~~ must design and implement an on-going water quality monitoring, maintenance and sampling program for the project's surface water management lakes, wetland preserves and groundwater in order to determine the concentration and effects of pollutants on-site.

The surface water quality monitoring program ~~shall~~ must be developed with South Florida Water Management District (SFWMD) and ~~shall~~ must be a part of the surface water management permit. Copies of all testing results will be sent to the SFWMD and Lee County Division of Natural Resources Management (DNRM).

An appropriate number of sampling sites ~~shall~~ must be selected to sufficiently evaluate the quality of water entering and exiting the Del Vera Herons Glen Project, and ~~that which will remaining in on-site~~ waterbodies, flowways and wetlands.

Water sampling will be conducted quarterly during construction of Phase I. After the first year of construction, the Del Vera Herons Glen consultants and the SFWMD ~~shall~~ must evaluate the appropriateness of stations, parameters and frequency of stations, parameters and frequency of sampling. ~~Monitoring of Phase I and II shall~~ must continue until such time that construction of the Del Vera Herons Glen project has been completed for two years.

Surface water samples will be collected and analyzed for the following parameters in accordance with Florida Department of Environmental Regulation Protection (FDERP) and SFWMD requirements:

- Chemical Oxygen Demand (COD)
- Total Organic Carbon (TOC)
- Total Suspended Solids (TSS)
- Un-ionized Ammonia
- Nitrate
- Dissolved Oxygen (DO)
- pH
- Total Nitrogen
- Total Phosphorous
- Fecal Coliform Bacteria
- Total Coliform Bacteria
- Nitrite
- Conductivity

- (b) The subsurface (groundwater) water quality monitoring: A groundwater program shall must be developed with the Florida Department of Environmental Regulation FDERP and will operate for the lifetime of the project. Copies of all groundwater testing results will be sent to the FDERP; and Lee County Division of Natural Resources Management DNRM.

The monitoring program to be developed with FDERP shall must be subject to the provisions of FAC. Rules 17-520 and 17-522, shall The program will be part of the development's wastewater permit, and will be conducted as follows:

- (1) All specified monitoring wells shall must be analyzed initially for the Primary and Secondary Drinking Water Standards listed in FAC. Rule 17-550.310 and .320, as well as EPA Method 608 parameters.
- (2) Water quality samples from a specified upgradient background well, an intermediate well, and a downgradient compliance well shall must be analyzed quarterly for the following indicator parameters:

- Sodium
- Total Dissolved Solids (TDS)
- Total Organic Carbon (TOC)
- Fecal Coliform Bacteria
- Specific Conductance (field)
- Nitrate Nitrogen



Sulfate  
Chloride  
pH (field)

In addition, samples from the intermediate and compliance wells shall must be analyzed for the following primary volatile organic parameters once per year:

Trichloroethene  
Carbon Tetrachloride  
1, 1, 1-trichloroethene  
Benzene  
p-dichloroethene  
Trihalomethanes  
Tetrachloroethene  
Vinyl Chloride  
1, 2-dichloroethane  
Ethylene dibromide  
1, 1-dichloroethene

(3) Groundwater elevations of the above wells shall must be measured and reported relative to National Geodetic Vertical Datum (NGVD) quarterly.

(4) Field testing, sample collection, preservation, and laboratory testing, including quality control procedures, shall must be in accordance with methods approved by the Florida Department of Environmental Regulation FDEP and as specified in FAC. Rule 17-160. All analyses shall must be performed by a Florida State-certified laboratory.

4. The developer shall must coordinate with Lee County and the Florida Department of Environmental Regulation FDEP in the on-site storage of any special or hazardous waste, as defined in the Lee County Hazardous Waste Assessment, that may be generated in the commercial, residential or recreational portions of the project site.

5. All design standards and water quality "best management practices" relating to Questions 15 and 22 of the ADA, Water and Drainage respectively, not in conflict with the above recommendations, are hereby incorporated by reference into this DRI Development Order and shall must be incorporated into the final local development order.

#### B. ENERGY

All site plans or architectural programs shall must incorporate, as a minimum, the following energy conservation features into all site plans and architectural programs, or the

property owner/developer ~~shall~~ must insure that the following features are implemented through deed restrictions ~~and/or~~ covenants with successors in title. All applications for site plan approvals and building permits ~~shall~~ must be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to insure compliance, such documents ~~shall~~ must be approved by the Lee County Attorney's Office prior to recording. If no deed restrictions are approved and recorded, the prior alternative ~~shall~~ must be utilized and the following features must be included:

1. Provisions of a bicycle/pedestrian path system connecting all land uses, to be placed along the main project road and local roads within the project. This system is to be consistent with local government requirements.
2. Provision of bicycle racks or storage facilities in recreational, commercial and multi-family residential areas.
3. Cooperation in the location of bus stops, shelters, and other passenger and system accommodations for a transit system to serve the project area, if such service becomes available to serve the project area.
4. Use of energy-efficient features in window design.
5. Use of operable windows and ceiling fans.
6. Installation of energy-efficient appliances and equipment.
7. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g., building orientation, clotheslines, and solar water heating systems).
8. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
9. Installation of energy-efficient lighting for streets, parking areas, recreation areas, and other interior and exterior public areas.
10. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
11. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.

12. Planting of native shade trees to provide reasonable shade for all recreation areas, streets, and parking areas.

13. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.

14. Planting of native shade trees for each residential unit.

15. Orientation of structures, as possible, to reduce solar heat gain by walls and to utilize the natural cooling effects of the wind.

16. Provision for structural shading wherever practical when natural shading cannot be used effectively.

17. Inclusion of porch/patio areas in residential units.

18. Consideration by the project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders and residents in their efforts to achieve greater energy efficiency in the development.

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

#### C. HISTORICAL/ARCHAEOLOGICAL

1. Locations identified as likely to contain archaeological or historical material shall must be preserved in recreation or preservation/open space areas. If this is not possible, these potential areas shall must be surveyed in detail by a qualified archaeological survey team prior to any site preparation.

2. If, during site preparation, any archaeological or historical sites are uncovered, the developer shall must cease all work in the immediate vicinity of the site, and the appropriate state and local agencies shall must be contacted to evaluate the site and make recommendations concerning excavation, preservation or mitigation.

#### D. FLOOD PLAIN/HURRICANE EVACUATION

1. The developer shall must provide, on at least an annual basis, information to residents concerning hurricane evacuation and shelters, through a homeowners' or residents' association.

2. The developer ~~shall~~ must formulate an emergency hurricane preparedness plan ~~which shall be that is~~ coordinated with the homeowner's association. The plan is subject to the approval of Lee County Emergency Management and ~~shall~~ must be established prior to any development within Phase I.B. or Phase II.

3. The developer ~~shall~~ must designate at least one, preferably two, helicopter landing areas within ~~Del Vera~~ Herons Glen for emergency medical service prior to any development within Phase I.B. or Phase II. The landing areas are subject to the approval of Lee County's Emergency Medical Service.

#### E. TRANSPORTATION

1. The ~~original~~ transportation impact assessment upon which this amended Development Order for ~~Del Vera~~ Herons Glen DRI Notice of Change is based assumes project buildout in 1998 2010. The traffic impact assessment included the expected impacts of the proposed residential land uses intended to be marketed to retirees by the applicant, non residential land uses and phasing schedule shown in attached Exhibit "B" ~~—A (Revised)—~~.

If it is found that the land uses at each phase of development differ from that which is presented in the ADA/DRI, then it will be deemed to be a substantial deviation of the Development Order and a resubmittal will be required of the developer or their successor(s).

2. ~~The proposed change in land use from manufactured housing to single family detached dwelling units that the applicant intends to market to retirees creates a potential substantial deviation, pursuant to Subparagraph §380.06(19) (b) 15, Florida Statutes. The annual monitoring report of Del Vera's actual transportation impacts will provide the clear and convincing evidence to confirm or rebut whether or not it is a substantial deviation.~~

An annual monitoring program, to be performed by traffic engineers engaged by the developer or their successor(s), ~~shall~~ must be established to monitor the development's trip generation and impact upon the surrounding roadways. The annual monitoring program ~~shall~~ must be designed in cooperation with the Lee County Department of Transportation (Lee County DOT), Lee County Division of Development Review, the Florida Department of Transportation (FDOT), the SWFRPC, and the FDCA, and will be subject to approval by the Lee County DOT ~~and~~ FDCA. At a minimum, the annual monitoring report ~~shall~~ must report the number, size and type of constructed and occupied on-site development at the time of monitoring, ~~calculate an occupied housing gross trip generation rate (defined as being prior to deductions for internal capture)~~ and ~~shall~~ 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 Nalle Grade Road as well as the following intersections:

US 41 and SR 739 (Business 41)  
US 41 and Littleton Road  
US 41 and SR 78 (Pine Island Road)  
SR 739 (Business 41) and SR 78 (Bayshore Road)

In addition, the developer's traffic consultant ~~shall~~ must perform peak season daily and P.M. peak hour traffic counts and level of service calculations for the following significantly impacted roadways:

SR 739 (Business 41) from US 41 to SR 78  
US 41 from Zemel Road in Charlotte County to SR 78

By July 1, 1993, the developer or their successor(s) ~~shall~~ must submit the first monitoring report to the Lee County DOT, Lee County Division of Development Review, SWFRPC, FDOT, and DCA. Starting with the first monitoring report submitted for the Notice of Proposed Change, each year's report ~~shall~~ must analyze the cumulative traffic for the ~~Del Vera~~ Herons Glen DRI.

Prior to the submission of the first annual monitoring report, the governmental entities (FDCA, FDOT, SWFRPC, and Lee County) and the developer ~~shall~~ must consult on a methodology to be used for conducting the traffic monitoring program, which is subject to approval by the Lee County DOT and FDCA. This monitoring report methodology will be utilized for subsequent monitoring reports unless revised after consultation with the relevant agencies and receipt of approval by the Lee County DOT and FDCA.

~~The monitoring reports shall provide an indication of the date that the adopted level of service is expected to be exceeded on significantly impacted roadways and intersections. Along with the monitoring of Del Vera cumulative traffic, Del Vera shall provide a one year projection of Del Vera traffic impacts with each year's monitoring report.~~

~~Monitoring Reports shall be submitted annually until buildout of the project.~~

The purpose of this monitoring program is to: (1) determine whether or not the traffic levels projected in the traffic impact assessment for ~~Del Vera~~ Herons Glen are exceeded by actual impacts, (2) assist Lee County and FDOT in determining the proper timing of necessary roadway improvements, and (3) ~~validate Del Vera DRI trip generation and (4) determine the intersection and roadway existing levels of service.~~

In lieu of the developer's obligation to annually monitor the above-mentioned

intersections and road segments, (US 41 and SR 739 (Business 41)), the developer, with the approval of the Lee County Department of Transportation DOT, shall may deposit with Lee County a one time sum of \$35,000 to be used in the installation and operation of two permanent count stations in the vicinity of expected impacts on US 41 and SR 739 along the roadway segments listed above.

In the event that the developer contributed~~s~~ the funding for these permanent traffic count locations, the developer or their successor(s) shall will only be obligated to report the counts from the permanent count stations, ~~calculate an occupied housing gross trip generation rate from the external trip generation rate, to~~ annually monitor for the number size and type of constructed and occupied on-site development at the time of monitoring, and to annually monitor the daily and P.M. peak hour traffic conditions, during the peak season, from all Del Vera Herons Glen access locations onto:

US 41 and  
Nalle Grade Road

~~The developer or their successor(s) shall submit the annual monitoring report for the access locations referenced above to the review agencies by July 1, 1993 and May 1, of each year thereafter beginning in 1994.~~

The transportation conditions contained in this DRI Development Order for Del Vera Country Club Herons Glen envision the construction of an adult retirement community. Similar in nature to the existing Del Tura Country Club Community (in close proximity along US 41 ~~and also built by the Applicant~~), the conditions of approval, specifically the mitigation for transportation impacts, were based upon an impact fee daily trip generation rate of 4.8 trips per dwelling unit.

~~If the annual monitoring report finds that the calculated gross trip generation rate of 4.8 trips per constructed and occupied dwelling unit per day is exceeded by 15%, regardless of whether or not the regional roadways significantly impacted by this development have fallen below the adopted level of service standard, then the developer or their successor(s) shall prepare a detailed transportation analysis and submit it in a notification of proposed change, pursuant to Subsection 380.06(19), Florida Statutes. That analysis will establish Del Tura current total trip and occupied housing gross generation rates, total project trip assignment and total project trip distribution. Using that data, Del Tura's trip generation, trip assignment, consumption of roadway service volume and significantly impacted roadways and intersections at the end of Phase I and buildout of Del Tura will be identified. If Del Tura's significantly impacted roadways and intersections, based on the above, are different than those impacts identified in the original DRI, (Question 31, Transportation) and those significantly impacted roadways and intersections are forecasted to fall below the adopted level of service standards by buildout of Del Tura, a determination shall be made as to whether this constitutes a substantial deviation.~~

If the annual monitoring report finds that the DRI Question 31. Transportation forecasted net new external daily trips (9,464) are exceeded by 15% (10,884), then ~~developer or their successor(s) shall be~~ a substantial deviation pursuant to §380.06(19)(b)15, Florida Statutes, will be deemed to exist and the development must undergo additional DRI review through the submittal of ADA transportation questions as required by Section §380.06, Florida Statutes.

~~Prior to updating the transportation concerns of the ADA, a pre-application transportation methodology meeting shall be conducted by the SWFRPC including FDCA, FDOT, Lee County, and the developer or their successor(s) as required by Section §380.06(7)(a) and (b) for pre-application meetings. The developer or their successor(s) shall update the Del Tura North ADA (Del Tura ) transportation question comprised, at a minimum, of a comparison of the revised land use trip generation, trip distribution, road improvement assumptions, and level of service determinations which this project will significantly impact.~~

Any additional transportation obligation which ~~that~~ may result from the above shall must consider the approved mitigation program and actual mitigation undertaken by Del Vera Herons Glen to that date. Additional mitigation, if any, would be reflective of the increased impacts of the development, if any.

3. The developer or their successor(s) ~~shall be~~ 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 Nalle Grade Road as well as construct Nalle Grade Road itself and all site-related improvements required within Del Tura Herons Glen DRI. Nalle Grade Road and access to the road shall must meet all requirements of the ~~Development Standards Ordinance, as the same now exists or as may be amended from time to time~~ Lee County Land Development Code. ~~Nalle Grade Road shall be constructed as a two-lane undivided roadway, within the existing right-of-way from US 41 to the project entrance. The developer's obligation for these improvement shall include the full costs of design and engineering, utility relocation, right-of-way acquisition and dedication (if needed, but not to include costs and legal fees for County condemnation proceedings associated with Nalle Grade Road), construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and when warranted). The alignment, design, signalization and construction schedule for these improvements shall be approved by the Lee County Engineer and FDOT.~~

The developer proposes to relocate a median opening on US 41 to align with Entrance #2. If the relocation of the median opening is not allowed pursuant to FDOT access management rules and permitting procedures, then no full access shall will be permitted at that location. This determination shall will be made by Lee County DOT, Lee County Division of Zoning and Department of Community Development Review, and the

FDOT prior to the issuance of permits and/or a local development order.

The developer or their successor(s) ~~shall~~ is not be eligible for credits against road impact fees for construction or dedication of rights-of-way associated with improvements at the project's access points deemed to be site-related as defined in the Lee County Roads Impact Fee Ordinance regulations.

If Nalle Grade Road, between US 41 and the project access point and west to US 41 or east to Del Prado/Mello Drive Extension, is built, as described above, by the developer prior to the end of Phase I for Del Vera DRI with procedures set forth in the Lee County Roads Impact Fees Ordinance regulations in effect at that time. The developer is guaranteed road impact fee credits for 100% of the eligible construction costs applicable to the construction and acceptance of Nalle Grade Road.

~~If additional acquisition of right-of-way is necessary to construct Nalle Grade Road as described above, and Lee County cannot complete condemnation of the right-of-way prior to the end of Phase I and beginning of Phase II for the Del Vera DRI, the developer may elect to deposit with Lee County the amount necessary to construct Nalle Grade Road as described above. This amount shall be adjusted for inflation to account for time delays attributable to condemnation proceedings. Upon deposit of this sum with the County prior to the end of Phase I and beginning of Phase II, the developer will be eligible for impact fee credits consistent with the procedures outlined in the Lee County Roads Impact Fee Ordinance as may be amended from time to time. It is understood by all parties that the developer or their successor(s) shall be entitled to impact fee credits for the construction of Nalle Grade Road as described above. Future amendments to the Lee County Roads Impact Fee Ordinance may only affect the procedure by which credits are issued and may not, under any circumstance, affect the developer's eligibility for credits themselves.~~

~~If condemnation is necessary for Nalle Grade Road, prior to issuance of building permits for Phase II, a traffic study will be conducted by the developer, as agreed upon by the Lee County DOT, to identify the additional Phase II units that would be supportable by the Phase I project access locations onto US 41. The Nalle Grade Traffic Study methodology shall be approved by Lee County prior to submittal. No further Phase II building permits beyond that level identified in the traffic study shall be issued until Nalle Grade Road and the project entrance onto Nalle Grade Road are open to traffic.~~

4. As mitigation for the impacts of the new development within Del Tura Heron's Glen DRI Phase I, and in lieu of payment of impact fees at the time of individual building permits for Phase I, the developer or their successor(s) have already provided to Lee County a sum equivalent to the initial Phase I impact fees based on a trip rate of 4.8 per units per day, totaling \$799,200 for 1,200 dwelling units, which were in effect at that time. Those monies represented a "pipelining" of Phase I road impact fee monies with such



monies to be used by Lee County for the Laurel Drive improvement (a portion of) and/or Henderson Grade Road, or a comparable east/west improvement, to be determined by Lee County, in the general Del-Tura Herons Glen DRI impact area.

The above payment for the 1,200 dwelling units did include a proportionate share payment for the potential signalization of the intersection of US 41 with SR 739 (Business 41).<sup>2</sup>

As mitigation for the impacts of new development within the Del-Tura Herons Glen DRI (beyond 1,200 units) yet to be constructed within Phase I and II, the developer shall must pay to Lee County roads impact fees in effect at the time building permits are issued for all applicable development within the DRI. Lee County shall will determine the timing of all necessary road improvements impacted by this DRI. ~~(Construction of Nalle Grade Road may substitute for all or a portion of Phase II impact fees if constructed consistent with Condition E.3).~~ These impact fee payments shall will represent Del-Tura Herons Glen DRI payments for widening of the impacted segments of SR 739 (Business 41) to four lanes, and improvements at the intersections of US 41 with SR 78 (Pine Island Road) and US 41 with Littleton Road.

Impact fee calculations for residential units shall will be based on the Mobile Home Park trip generation rate of 4.8 trips per day per dwelling unit. ~~If it is found by the annual monitoring program that Del-Tura's trip generation exceeds 4.8 daily trips per dwelling unit, then this project shall pay to Lee County the single family residence road impact fee at the time of issuance of all subsequent building permits including the difference needed to increase previously "pipelined" payments to the required amount. Otherwise, the developer may conduct an "Independent Fee Calculation" study as defined in the Lee County Road Impact Fee Ordinance as amended and Administrative Code F-0032, as amended, to establish the applicable trip generation rate.~~

Should the roads impact fees be repealed, reduced or made unenforceable by court action, ~~a substantial deviation shall be deemed to have occurred, and the traffic impacts of Del Vera Herons Glen DRI shall be reanalyzed to determine appropriate alternative mitigation and the Development Order amended as appropriate to include such mitigation prior to the issuance of subsequent building permits for Del Vera DRI~~ will continue to pay, per individual permit, an amount equivalent to the roads impact fees in effect prior to such repeal, reduction, or court action .

5. ~~Should Level of Service "D" on a peak season peak hour basis as defined in Lee County Administrative Code AC-13-16 (See Attachment E) be~~ If the adopted level of service is exceeded for any regional road segment and/or intersection identified above, and:

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<sup>2</sup>This improvement was constructed in June 1996.

- (a) The required road and/or intersection improvements necessary to bring the identified roadway back to ~~Level of Service "D" peak season peak hour (or the Lee County adopted Level of Service at the time of the annual monitoring report)~~ are not funded and programmed for construction during the next five years (or if such roadway and/or intersection improvements funded and programmed for construction during that five year period be are deleted from the program, postponed beyond the five-year period or not constructed within the five-year period), and
- (b) Del Vera Herons Glen DRI traffic is utilizing 5% or more, but less than 10% of ~~Level of Service "D" peak hour~~ the adopted level of service volume during the peak season on the impacted regional road segment or intersection;

then the developer or their successor(s) ~~shall must~~, within ninety (90) days, file a petition in accordance with ~~Section~~ §380.06, Florida Statutes for determination of whether a substantial deviation has occurred.

If Del Vera Herons Glen DRI is utilizing 10% or more of ~~Level of Service "D"~~ the adopted level of service volume on a peak season peak hour basis as defined in Lee County's Administrative Code AC-13-16 on the impacted regional road segment and/or intersection, and the actual Level of Service on the said roadway or intersection is worse than Level of Service "D" the adopted level of service volume on a peak season peak hour as defined in Lee County Administrative Code AC-13-16, then a substantial deviation shall must be deemed to have occurred.

Del Vera Herons Glen DRI may continue development during substantial deviation DRI review if the developer or their successor(s) enters into an agreement with the FDCA, SWFRPC, FDOT, and Lee County specifying the scope of development allowed during the review period. This paragraph, however, ~~shall may~~ not be construed to guarantee to Del Vera Herons Glen DRI the right to continue development during substantial deviation DRI review.

6. Nothing contained in this Development Order ~~shall may~~ be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which that this development generates demand or is benefitted.

7. If any contributions and/or road or intersection improvements specified herein are required of the developer but are not funded or provided within the time frames specified herein, development activities and the issuance of permits by Lee County for the

Del-Vera Heron's Glen DRI shall must immediately cease until the obligation is fulfilled.

8. In the event that Lee County anticipates additional urbanization in the area between US 41 and I-75 to the north of SR 78, north/south roads paralleling US 41 may be required to relieve traffic congestion associated with any further urbanization. The developer shall must work with Lee County to facilitate such north/south road facilities.

## F. VEGETATION AND WILDLIFE/WETLANDS

### 1. MANAGEMENT AREA PRESERVE

- (a) Exhibit Figure I of the "Revised RCW Monitoring and Management Plan for Del-Tura and Villages of Nantucket" Heron's Glen DRI, dated September 11, 1992, (Attachment C-B) July 2000 and attached as Exhibit C, depicts the "RCW Preserve" as encompassing a total of 204.35 210.11 acres, comprised of 181.81 acres of transition pine flatwoods (TZ), 45.50 21.26 acres of upland pine flatwoods, 5.00 acres of freshwater marsh (RPA) and 2.04 acres where an existing haul road is to be has been removed and planted with pine. The 181.81 acres of transition pine flatwoods includes all existing TZ of the central flow-way except for 2.91 acres to be devoted to roadway access to Phase 1-B and Phase II development. Other pineland to be retained on site includes approximately 51.59 acres. This acreage is found within buffers, golf course, open space and other preserved transition pine flatwoods as shown on Exhibit I.
- (b) Engineering design must provide reasonable assurance that stormwater lakes proposed adjacent to the central RCW preserve will not drain wetlands and that surface water sheet flow will be maintained on either side of the new road alignment proposed to cross the central RCW preserve. All correspondence with the South Florida Water Management District related to engineering design and permitting of the above-identified lakes and new roadway alignment will be copied to the Florida Game and Fresh Water Fish Commission.
- (c) If the Red Cockaded Woodpeckers totally abandon the RCW Preserve for ten consecutive years as evidenced by the annual RCW monitoring, then the developer may file a Notice of Proposed Change (NOPC) seeking to remove<sup>3</sup> the designation of the 21.3± acres of upland pine flatwoods located within the RCW Preserve from the

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<sup>3</sup>In the event that this acreage is removed from the preserve as allowed under this condition, a substantial and sufficient amount of hydric pine flatwoods habitat (183± acres) would still remain on-site.

RCW Preserve area.<sup>4</sup>

- (d) Any reconfiguration of the RCW Preserve or Wetland Preserve areas must be reviewed under the provisions found in §380.06(19) applicable to the filing of a NOPC.

2. MONITORING PLAN

- (a) Monitoring ~~shall~~ must be in accordance with the "Revised-Red-Cockaded Woodpecker Monitoring and Management Plan for Del Vera and Villages of Nantucket" Hérons Glen dated September 11, 1992 ~~July 2000 and attached as Exhibit C~~ and the "Amended Revised Wetlands Management Plan for Del Vera and Villages of Nantucket" Hérons Glen dated September 11, 1992, (see Attachment D-C), with the following modifications: July 2000 and attached as Exhibit D.
- (i) ~~Page 26 of the above referenced RCW Plan shall delete the word "infrastructure" from line four.~~
- (ii) ~~Section "7.0 PROVISION" shall be revised as follows: "In the event that Red-Cockaded Woodpeckers totally abandon the RCW Preserve for ten (10) consecutive years as evidenced by the monitoring described in Section 6.0, the developer may request an adjustment to the 15.5 acres of upland pine flatwoods contained in the RCW Preserve through the Substantial Deviation process per Section §380.06 (19), F.S.~~
- (iii) ~~Section "6.0 MONITORING" shall also require that the system of monitoring transects be spaced 100 feet apart in areas of dense canopy or midstory.~~

3. MANAGEMENT PLAN

- (a) Foraging, roosting and possible nesting RCWs have been documented on the site and the developer's plans to preserve pine forest on the site will maintain available habitat for RCW foraging and

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<sup>4</sup>In the First Amendment to the DRI DO, the acreage of upland pine flatwoods referenced in this condition was 15.5 acres. This acreage has been increased to 21.3 acres to include the acreage of upland preserve (buffer) area established around the two newly active RCW trees located outside of the main RCW preserve.

nesting activities. In addition, the melaleuca on the site will be eradicated and controlled, thus significantly enhancing the quality of the project's area. This exotic control program ~~shall~~ must be continued throughout the life of the project.

- (b) To ensure maximal available forage area on site, no pine trees greater than or equal to eight (8) inch diameter breast height (dbh) ~~shall~~ may be removed, except those found in a road, lake, golf tee, golf green, middle of fairway, or under house lots.
- (c) To ensure minimal disturbance of RCW nest activities, the developer is prohibited from initiating any clearing or other construction within ~~three hundred (300) feet of cavity trees during April, May and June of each year.~~
- (d) The preserve area ~~shall~~ must be actively managed by the developer to insure continued quality RCW habitat through the use of a combination of prescribed burning/mowing/exotic control measures. Burning will be the preferred management technique. Any prescribed burning of the site ~~shall~~ must be conducted in accordance with the Florida Division of Forestry guidelines.
- (e) The initial unit prescribed burn ~~shall~~ must be conducted ~~prior to or in conjunction with the initial phase of site development for Phase I-B and/or Villages of Nantucket within three years of the completion of initial exotic eradication activities in the RCW preserve.~~
- (f) Prescribed burning techniques ~~shall~~ must be in accordance with the ~~"Revised Red-Cockaded Woodpecker Monitoring and Management Plan for Del Vera and Villages of Nantucket" dated September 11, 1992; attached Exhibit C.~~
- (g) Replanting of golf course buffers designated as pine buffer will be as depicted on Exhibit figure 1 of the Revised Red-Cockaded Woodpecker plan (dated September 11, 1992) shall must be limited to south-Florida slash-pine attached Exhibit C.
- (h) The developer must comply with the additional conditions set forth in condition 3 of Zoning Resolution 00-78 pertaining to the 2000 RPD

amendment designated as DRI964596 and DCI964597.<sup>5</sup>

4. Viability of wetland preserves ~~shall~~ must be in accordance with the "~~Amended Wetlands Management Plan for Del Vera and Villages of Nantucket~~" dated September 11, 1992, (see Attachment D-C) attached Exhibit D.
5. Should the developer find any further endangered or threatened species of special concern of either wildlife or plant species, during construction or detailed permit review, the developer ~~shall~~ must contact the proper Federal, State and County authorities and assure that adequate measures are taken and permits obtained to protect these species.

#### G. SOLID WASTE

1. The developer ~~shall~~ must investigate feasible methods of reducing solid waste volume at ~~Del Tura North Herons Glen~~. Methods to investigate ~~shall~~ must include, for instance, the use of compaction of the Commercial Center and Clubhouse.
2. The ~~Del Tura North Herons Glen~~ wastewater treatment plant and its

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<sup>5</sup>The following conditions address Environmental concerns, and are intended to supplement the conditions and provisions contained within the DRI Development Order:

(a) The Red-Cockaded Woodpecker (RCW) management plan entitled "Attachment B: Revised Red-Cockaded Woodpecker Monitoring and Management Plan for the Herons Glen DRI (f.k.a. Del Vera, Villages of Nantucket and Del Tura North DRI), Lee County Florida" dated July 2000 is hereby adopted with the following conditions:

- (1) Prescribed burns of the RCW Preserves must commence within three years of the completion of the initial exotic eradication activities in the RCW preserve, and must be completed on the entire site within three years of that date, or no later than 2007; and
- (2) All burns must occur between January and March to avoid the RCW nesting season; and
- (3) The Division of Planning - Environmental Sciences staff must be notified in writing of each scheduled burn at least 15 days prior to the prescribed burn.

(b) The wetland management plan entitled "Attachment C: Revised Wetlands Management Plan for the Herons Glen DRI (f.k.a. Del Vera, Villages of Nantucket, and Del Tura North)" dated July 2000 and counter stamped August 14, 2000 is approved with the following conditions:

- (1) Prior to any invasive exotic removal or control, the Division of Planning - Environmental Sciences Staff must be notified in writing of the commencement and estimated completion dates, the removal method proposed, and the herbicide to be applied. The exotic removal method and herbicide are subject to Environmental Sciences Staff review and approval; and
- (2) An appropriate herbicide must be applied to the trunk immediately following the cutting of any invasive exotic vegetation; and
- (3) The semi-annual exotic vegetation maintenance must occur in March and October. The exotic vegetation maintenance must commence in March 2001 for a minimum duration of three years as specified in the wetlands management plan, and then on an as-needed basis thereafter; and (4) Monitoring reports of exotic vegetation within the RCW preserve must include at a minimum one photo from each of the four units prior to each semi-annual maintenance and one month following the completion of the exotic maintenance. The monitoring reports must be submitted to Environmental Sciences Staff in May and December each year. The pine planting monitoring report must be submitted as part of the May monitoring report.

(c) The irrigation line installed in the pine planting area within the preserve must be removed prior to the 2001 Red-Cockaded Woodpecker nesting season (April-June). The May 2001 monitoring report must document the removal of the irrigation line.

associated component, including the spray irrigation system, shall must meet all County and State design and operating requirements.

#### H. WATER SUPPLY

1. The developer shall must obtain all appropriate water use permits from the South Florida Water Management District (SFWMD) and Lee County prior to any on-site construction.

2. The ~~Del Tura North~~ Herons Glen project shall must utilize such water conservation measures as are referenced in the ADA, as well as those required by State law, and shall must consider the use of "xeriscape" landscaping.

#### I. GENERAL CONSIDERATIONS

1. All commitments, ~~and impact mitigating actions provided by the developer within the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions for approval.~~ and conditions of the original DRI Development Order and subsequent Development Order Amendments remain in full force and effect. Where a conflict or inconsistencies exist, this Codified Development Order Amendment will control.

2. The developer shall must submit an annual report on the Development of Regional Impact to Lee County, the Southwest Florida Regional Planning Council, the Department of Community Affairs and all affected permit agencies as required in Subsection §380.06(18), Florida Statutes. ~~For specific information to be contained in this report see attached Exhibit B.~~

3. The development phasing schedule attached as Exhibit B presented within the ADA and as adjusted to date of Development Order approval shall be is incorporated as a condition of this development order approval. If The Development Order conditions and developer commitments based upon and incorporated within in the development order, ADA, sufficiency documents or NOPC application are intended to mitigate regional impacts, If these conditions and commitments are not carried out as indicated to the extent or in accord with the timing schedules specified within the Development Order Amendment and this phasing schedule, then this shall be presumed to be a substantial deviation for the affected regional issue will be deemed to have occurred.

4. Pursuant to Chapter §380.06(16), the developer may be subject to credit for contributions, construction, expansion, or acquisition of public facilities. If the developer is also subject by local ordinances to impact fees or exactions to meet the same needs, then the local government and the developer may enter into a capital contribution front-

ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.

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

BE IT FURTHER RESOLVED, by the Board of County Commissioners of Lee County, Florida, that:

1. This Resolution shall constitute the Codified Development Order Amendment constitutes a resolution of this the Lee County Board of Commissioners issued in response to the Development of Regional Impact Application for Development Approval filed for Del Tura North Herons Glen DRI.

2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval, subsequent NOPC applications and supplementary documents and not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order Amendment. These documents include the following:

(a) — ~~Del Tura North Application for Development Approval;~~

(b) — ~~Del Tura North DRI sufficiency response, August, 1987; and~~

(c) — ~~Del Tura North DRI sufficiency response, November, 1987.~~

3. This Development Order shall be is binding upon the developer and their heirs, assignees or its successors or assigns in interest. Those portions of this Development Order which Amendment that clearly apply only to the project developer, including but not limited to the initial construction of capital facilities, shall will not be construed to be binding, however, upon future residents of single dwelling units or persons purchasing individual house sites for personal residential purposes. It shall will, however, be binding upon any builder/developer who acquires any tract of land within ~~Del Tura North~~ Herons Glen.

~~It is hereby declared that the~~ The terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order Amendment.

All conditions, restrictions, stipulations and safeguards contained in this Resolution and Development Order Amendment may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable



attorneys' fees, ~~shall~~ will be paid by the defaulting prevailing party.

4. It is understood that any reference herein to any governmental agency ~~shall~~ will be construed to mean any future instrumentality which may be instrumentalities created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any ~~the~~ referenced governmental agency in existence on the effective date of this Development Order Amendment.

5. ~~In the event that~~ If any portion or section of this Development Order Amendment is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision ~~shall in no manner will not~~ will not affect the remaining portions or sections of the Development Order Amendment, which ~~shall~~ will remain in full force and effect.

6. The approval granted by this Development Order Amendment is limited. ~~Such approval shall~~ Approval may not be construed to obviate the duty of the developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. ~~Such approval shall also not obviate the duty of the developer to comply with any County Ordinance or other regulations adopted after the effective date of this Development Order.~~

7. Subsequent requests for local development permits ~~shall~~ will not require further review pursuant to Section §380.06, Florida Statutes, unless it is found by the Board of County Commissioners finds, after due notice and hearing, that one or more of the following is present occurs:

- (a) A substantial deviation from the terms or conditions of this Development Order Amendment, or other changes to the approved development plans which creates a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or
- (b) ~~An expiration~~ Expiration of the period of effectiveness of this Development Order ~~as provided herein~~.

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

8. The deadline for commencing physical development under this Development

~~Order shall be five (5) years from the date of its adoption, provided that all conditions are met in a timely manner and further provided that this effective period may be extended by this Board upon a finding of excusable delay in any proposed development activity and that conditions have not changed sufficiently to warrant further consideration of the development.~~

~~In the event the developer fails to commence significant physical development of that property identified in this Development Order within five (5) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion on some substantial portion of the project (e.g., water management system or road system).~~

~~This Development Order otherwise terminate in fifteen (15) years from its adoption date unless an extension is approved.~~

The project has a buildout date of May 3, 2010 and a termination date of May 3, 2016. This term recognizes the cumulative 12 year extension granted from the original 1998 buildout date and the fact that a local development order, which is valid for six years, may be obtained prior to May 3, 2010. No permits for development will be issued by the County subsequent to the termination date or expiration date unless the conditions set forth in Florida Statutes §380.06(15)(g) are applicable. Future requests to extend time will be evaluated cumulatively with past requests in accordance with §380.06(19), Florida Statutes.

~~An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, have been identified. However, an extension of the date of buildout of a development by five (5) or more years shall be presumed to create a substantial deviation subject to further development of regional impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits.~~

9. The Administrative Director of the Lee County Department of Community Development or his/her designee, shall be is the local official responsible for assuring compliance with this Development Order.

10. The development will not be subject to down-zoning, unit density reduction,

or intensity reduction, ~~for five (5) years following the approval of zoning prior to May 3, 2016, unless the~~ If the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order, ~~as amended, including, but not limited to, such factors as a finding or finds~~ that the development order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by ~~local government~~ Lee County to be essential to the public health, safety and welfare, then down-zoning, unit density reduction, or intensity reduction may occur [See 9J-2.025(3)(b)13].

11. The developer, or his successor(s) in title to the undeveloped portion of the subject property, ~~shall~~ must submit a report annually to the Lee County Board of County Commissioners, the Southwest Florida Regional Planning Council, the State land planning agency, and all affected permit agencies. This report ~~shall~~ must describe the state of development and compliance as of the date of submission, and ~~shall~~ must further be consistent with the rules of the State land planning agency. The annual report ~~shall~~ must include information ~~contained in Exhibit B required by §380.06(19), Florida Statutes.~~ The first monitoring report ~~shall~~ must be submitted to the Administrative Director of the Department of Community Development not later than May 1, 1989, and further reporting ~~shall~~ must be submitted not later than May 1st of subsequent calendar years. Failure to comply with this reporting procedure is governed by Section §380.06(18), Florida Statutes, and the developer ~~shall~~ must so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This ~~shall~~ may not be construed to require reporting from residents or successors of individual home sites or dwelling units.

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

## SECTION TWO

A. ~~The proposed changes to the Del Vera DRI Development Order described herein are consistent with the adopted Comprehensive Plan of Lee County and applicable local land development regulations.~~

B. ~~The proposed changes to the Del Vera DRI will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.~~

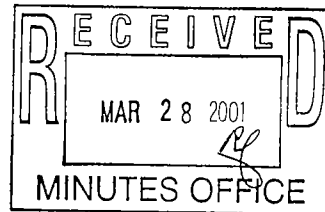
G. The proposed changes are consistent with the State Comprehensive Plan.

### SECTION THREE

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

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

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



DULY PASSED AND ADOPTED this 27th day of day of February, 2001.

ATTEST  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: Ruth Figueroa  
Deputy Clerk

BY: [Signature]  
Chairman

APPROVED AS TO FORM

By: [Signature]  
County Attorney's Office

#### Attachments:

- Exhibit A - Map H-3
- Exhibit B - Phasing Schedule
- Exhibit C - Revised Red-Cockaded Woodpecker Monitoring and Management Plan for Herons Glen DRI dated July 2000.
- Exhibit D - Revised Wetlands Management Plan for Herons Glen DRI dated July 2000

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State of Florida  
County of Lee

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

Given under my hand and official seal at Fort Myers, Florida, this 28th day of March, A.D. 2001.

CHARLIE GREEN, CLERK

By: Ruth Figueroa  
Deputy Clerk



## Phasing Schedule

<u>Proposed Phase</u>	<u>Use</u>	<u>Quantity</u>
I -1989 -1995 <u>2005</u>	Detached Single Family Dwellings	1,302 <u>770</u> du.
	<u>Zero Lot Line Villas</u>	<u>134 du</u>
	<u>Townhouses</u>	<u>134 du</u>
	Sales Center <sup>(2)</sup>	2,500 <u>3,450</u> sq. ft.
	Commercial Uses <sup>(1)</sup>	4,000 <u>9,000</u> sq. ft.
	Golf Courses/ <u>Clubhouses</u>	127- <u>247</u> acres (18 <u>36</u> holes)
II - 1992 <u>2006</u> -1998 <u>2010</u>	Detached Single Family Dwellings	1,398 <u>850</u> du.
	<u>Zero Lot Line Villas</u>	<u>406 du</u>
	<u>Townhouses</u>	<u>406 du</u>
	Sales Center <sup>(2)</sup>	2,500- <u>3,450</u> sq. ft.
	Commercial uses <sup>(1)</sup>	6,000- <u>3,000</u> sq. ft.
	<del>Village Center</del>	<del>4.5 acres</del>
	<del>Recreation Center</del>	<del>7 acres</del>

MAP H is hereby replaced by MAP H-2-3 (see Attachment B).

<sup>(1)</sup> Commercial uses will be located in the clubhouses.

<sup>(2)</sup> The Sales Center use will be moved when Phase 1 approaches buildout

Exhibit B

## **Exhibit C**

### **REVISED RED-COCKADED WOODPECKER MONITORING AND MANAGEMENT PLAN FOR THE HERONS GLEN DRI (F.K.A DEL VERA, VILLAGES OF NANTUCKET, AND DEL TURA NORTH DRI); LEE COUNTY, FLORIDA**

**JULY 2000<sup>1</sup>**

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<sup>1</sup> Note: This Plan constitutes an amendment of the previously adopted Plan dated September 11, 1992. A copy of the strike-thru and underline version is available at the Department of Community Development. However, for ease of use and reference, the strike-thru and underline have been removed from this exhibit.

**REVISED RED COCKADED WOODPECKER MONITORING AND  
MANAGEMENT PLAN FOR THE HERONS GLEN DRI (f.k.a. DEL VERA,  
VILLAGES OF NANTUCKET, and DEL TURA NORTH DRI),  
LEE COUNTY, FLORIDA  
July 2000**

## **1.0 INTRODUCTION**

This document serves to revise the red-cockaded woodpecker (RCW) monitoring and management plan for the Herons Glen DRI and supercedes the document titled "*A. Revised Red Cockaded Woodpecker Monitoring and Management Plan for Del Vera and Villages of Nantucket, Del Tura North DRI, Lee County, Florida*" (Conservation Consultants, Inc.; September 11, 1992). Revisions contained herein are primarily related to exotic eradication methods and have been instituted to make this plan consistent with the "*Revised Wetlands Management Plan For The Herons Glen DRI*" (July 2000). Other portions of the original plan have remained largely unchanged in intent. Institution of the methods described herein will result in compliance with the conditions of the DRI development order, the Lee County development order, and the South Florida Water Management District permit relative to the RCW.

Herons Glen (formerly known as Del Tura North) is a DRI of approximately 1,151 acres located in the unincorporated area of North Fort Myers, Lee County, Florida. The Herons Glen DRI is planned for a maximum of 2,700 single-family units, incorporating an 18-hole golf course to be developed in phases.

The Development of Regional Impact/Application for Development Approval (DRI/ADA) for the project was submitted during April, 1987. A Development Order (D.O.) approving the project with conditions was adopted on April 25, 1988 by the Lee County Board of County Commissioners. D.O. Condition F.1, VEGETATION AND WILDLIFE/WETLANDS, noted the occurrence of foraging Red Cockaded Woodpeckers (RCWs) and apparently abandoned cavity trees on the site. By terms of the condition, approximately 224 acres of the site were to be set aside as RCW preserve as shown on the amended Conceptual Master Development plan, designated Map H, of the DRI/ADA. The preserve boundary could be subject to minor reconfigurations (5%)



during final planning. Condition F.1 of the D.O. further required the developer to conduct annual surveys of the entire site for RCWs and to survey each phase's development area within sixty days prior to construction. Should a survey document re-activation of existing cavity trees or the development of new nesting activities by RCWs, the monitoring (management) plan and project design could be re-designed "...in accordance with the developer, SWFRPC, GFC and Lee County staff."

On June 23, 1989, the owner was advised by Kimberly A. Dryden of the Florida Game and Fresh Water Commission (GFC) of "reactivation" of the RCW colony site. However, a survey for RCW on the Phase 1-A area conducted during July 1989 by Dr. Eric Heald did not reveal the presence of RCW or cavity trees within the Phase 1-A area. A subsequent survey of the entire site was conducted on September 19, 1989 by Ms. Dryden and Mr. Heald. Observations of this survey documented the occurrence of an active RCW colony within the central "flow-way" area located east of Phase 1-A. Subsequently, more detailed surveys of the colony were performed by Conservation Consultants, Inc. (CCI). The results of those surveys were previously summarized in the document titled *"A Revised Red Cockaded Woodpecker Monitoring and Management Plan for Del Vera and Villages of Nantucket, Del Tura North DRI, Lee County, Florida"* (Conservation Consultants, Inc.; September 11, 1992).

## **2.0 GENERAL BACKGROUND**

As described in the DRI/ADA, the Herons Glen site was characterized by four native vegetation associations identified as Pine Flatwoods (766.26 acres), Transition Pine Flatwoods (222.36 acres), other Hardwood Oak (0.72 acre) and Freshwater Marsh (39.32 acres). Man-altered features comprised about 68.75 acres. The approximately 290 acres in Phase 1-A now occurs on the western portion of the site which was predominantly pine flatwoods. The active RCW colony is located within the northeast area of the Transition Pine Flatwoods that comprise a centrally located "flow-way". Figure 1 provides the locations and numerical designations of cavity trees and starter holes recorded through early May of 2000. Since RCW monitoring was initiated in the

early 1990s, 33 trees with a total of 39 cavities have been recorded on the site. Fifteen (15) of the trees, representing 18 cavities, have died or fallen over time, while the remaining 18 live trees house 21 cavities. As of the 2000 annual RCW monitoring event conducted in late April and early May of 2000, the 21 cavities in live trees included 5 active, 7 inactive, 7 abandoned, and 2 start holes. As of early May 2000, the total estimated RCW population of the site included one clan of approximately 5 birds. Specific details regarding the RCWs of the site can be found in the Year 2000 Annual RCW Monitoring Report for the Herons Glen DRI.

The Transition Pine Flatwoods have a moderate to open canopy of slash pines (*Pinus elliotii*) with an understory of wetland and transitional species of graminoids and herbs, such as cyperus sedge (*Cyperus odoratus*), St. John's Wort (*Hypericum galioides*), broom sedge (*Andropogon virginicus*), white-top sedge (*Dichromena colorata*), bog buttons (*Lachnocaulon anceps*), goldenrod (*Solidago* spp.), and swamp fern (*Blechnum serrulatum*). Typically, the midstory in this habitat is open, vegetated by scattered wax myrtle (*Myrica cerifera*) and bald cypress (*Taxodium distichum*). Much of the midstory of this habitat was moderately to densely vegetated by *Melaleuca* (*Melaleuca quiquenervia*) and wax myrtle (*Myrica cerifera*). Exotic eradication activities conducted in the RCW preserve area have resulted in a substantial decrease in *Melaleuca* in treated areas.

The Pine Flatwoods remaining east of the "flow way" is forested upland with some palmetto understory. This category is dryer than the pine transition zone and is characterized by a more developed overstory of slash pine (*Pinus elliotii*). The understory is characterized by either panic grasses (*Panicum* spp.) or saw palmetto (*Serenoa repens*). Other characteristic species include wax myrtle, broom sedge (*Andropogon virginicus*), gallberry (*Ilex glabra*), dwarf wax myrtle (*Myrica pusilla*), pennyroyal (*Satureja rigida*), and *Lyonia* spp. Infestations of *Melaleuca* are common throughout the pine flatwoods. All of the flatwoods have experienced extensive logging, stumping and drainage.

## PREVIOUS SURVEYS

Information pertaining to the original RCW survey methods and results has been deleted from this document since it is no longer current. The reader is referred to the annual RCW monitoring reports for the Herons Glen DRI for more current information regarding RCW activity of the site.

### 3.0 MANAGEMENT AREA DESIGNATIONS

#### 3.1 Management Area Preserve

Figure 1 depicts the revised central RCW Management Area Preserve ("RCW Preserve"). Based on field surveys, the "RCW Preserve" encompasses a total of 210.11 acres comprised of 181.81 acres of transition pine flatwoods (TZ), 21.26 acres of upland pine flatwoods, 5.00 acres of freshwater marsh (RPA) and 2.04 acres where an existing road is to be removed and planted with pine.

The 181.81 acres of transition pine flatwoods includes all existing TZ of the central flow-way except for 2.91 acres devoted to roadway access to Phase 1-B and Phase II development. Although the seasonal range and habitat use data recorded for the site's RCWs indicates that less than one-quarter of the central flow-way TZ was frequented by the RCW clan, the transition pine flatwoods throughout the RCW Preserve offer suitable foraging habitat except where dense *Melaleuca* stands currently occur. Removal of the *Melaleuca* from dense stands located in the immediate vicinity of the colony will, however, immediately increase available foraging area as significant numbers of mature pines (>4" DBH) remain within the *Melaleuca* stands.

The central flow-way RCW Preserve encompasses 28 of the 33 cavity trees recorded through the 2000 annual monitoring event. Of the remaining trees, two are active (#23 and #26 - Figure 1), one is inactive (#30), one is abandoned with the tree fallen (#27), and one is a start hole tree (#33). All active and start hole trees located outside of the preserve will be protected and preserved. Should any of these trees be located within a road ROW or fill area, Lee County Division of Environmental Sciences, or successor, will be notified and provided copies of all appropriate State or Federal permits or approvals required for tree removal, if any.

### **3.2 Other Retained Pineland**

Other pineland to be retained on site includes approximately 51.59 acres. This acreage is found within buffers, golf course, open space and other preserved transition pine flatwoods.

## **4.0 MAINTENANCE OF THE RCW PRESERVE**

The maintenance objectives for the management area are to provide for the continued on-site existence of suitable foraging and nesting habitat for RCWs. In general, habitat preferred by the RCW in Southwest Florida includes a diversity of slash pine stand age and condition. Additionally, colonies are typically found in open stands with sparse midstories. Thus, maintenance of the management area will employ techniques that retain existing stands of older slash pine, encourage regeneration of slash pine (but not at high density) and minimize development of midstory vegetation within the colony, e.g., hardwoods, wax myrtle. Additionally, dense stands of *Melaleuca* will be eliminated from the vicinity of the colony and pine plantings will be made in the road removal area.

### **4.1 Fire Maintenance**

The RCW Preserve will be divided into four management units as shown on Figure 2 for purposes of fire maintenance.

Controlled burns to each management unit will occur every three years. The sequencing of burns will be from the southeast unit, to the northwest unit, to the southwest unit to the northeast unit (colony area). For each intended burn, the perimeter of each unit will be double plowed prior to the wet season where cleared breaks do not already exist to insure fire containment within the management area. In no case will plowing for burn containment occur within 50 ft. of a cavity tree. Also, for burns encompassing the colony area (northeast unit), excessive leaf litter and other flammable debris will be hand removed from around the base of each cavity tree (25' radius). Each burn of the northeast unit will also be planned to occur outside of the red-cockaded woodpecker nesting season. The burn plan for each unit will adhere to state and federal guidelines for prescribed burns and any necessary burn permits will be secured from Lee County and the Florida Division of Forestry. The Lee County Division of Environmental Sciences, or its successor, will be notified in writing of each scheduled burn at least 15 days prior to the approved burn period.

#### **4.2    Mechanical Techniques**

Mechanical methods, should they become appropriate, may include mowing, bush hogging and/or selective hand thinning/removal of vegetation.

In the event burn management becomes unlawful or is judged unsafe at any time by Lee County or state fire officials, the previously described fire maintenance program will be replaced by mowing of relatively open areas and bushhogging of ranker growths. The frequency and sequencing of mowing/bushhogging would be the same as for the burn program. If fire is suppressed, it may also become necessary to hand remove midstory vegetation from within the colony area in association with mechanical management of the unit.

#### **4.3    Melaleuca Removal**

*Melaleuca* in the RCW Preserve will be eradicated and controlled in accordance with procedures specifies in the “*Revised Wetlands Management Plan for the Herons Glen DRI* (July 2000).

#### **4.4    Pine Planting**

Planting of South Florida slash pine will proceed following removal of the roadway fill and grading to elevations similar to the adjacent TZ flatwoods. Slash pine will be planted on approximate ten feet (10 feet) centers (436 trees/acre) throughout the 2.04-acre road removal area and will be comprised of the following materials and distribution:

10 gallon – 10% of Plantings

3 gallon – 25% of Plantings

1 gallon – 65% of Plantings

### **5.0    MONITORING**

A monitoring program has been implemented to assess continued occurrence of RCWs within the RCW Preserve. South Florida slash pines were planted in the roadway mitigation area in early 2000. A monitoring program has been implemented to determine the success of slash pine plantings. *Melaleuca* invasion/control monitoring will be as described in the “*Revised Wetlands Management Plan for the Herons Glen DRI*” (July 2000). The monitoring of the RCW Preserve has and will continue to be performed annually during the RCW breeding period (April-June) and will consist of the below-described program. The separate annual program

of monitoring of remaining undeveloped portions of the site as required by the D.O. will be performed concurrently using the same procedures as previously conducted.

**RCW Preserve:** Three (3) consecutive days of observation will be performed beginning at sunrise and lasting for approximately four to five hours. Observations will be initiated at the colony site and will serve to record number of birds present, cavity status, daily activities and foraging movements within the RCW Preserve. Any observed new cavity tree locations will be recorded and mapped. Additionally, the RCW monitoring program shall also include a separate survey of the total area of the RCW Preserve on a grid basis to determine the presence of RCWs and/or indications of their presence, e.g., cavities, starter holes, resin wells, feeding marks. For this survey, a system of north-south and east-west transects spaced 300 feet apart within the RCW Preserve will be walked using a 1" = 300' aerial photograph with the transects overlaid as a guide. In areas of dense canopy or midstory, the spacing of survey transects shall be 100' apart to insure adequate visual coverage. As previously noted, the remainder of the project site will also be surveyed during the period April-June for compliance with D.O. Condition F.1 VEGETATION AND WILDLIFE/WETLANDS which requires an annual survey of the entire site for RCW occurrence monitoring.

**Slash Pine Plantings:** The pine planting area will be monitored according to SFWMD protocol to assess survival and establishment of planted slash pine. Observations will include estimated percent survival of each size class, measured height on a 10% sample subset of each size class and estimated percent cover for dominant naturally recruited vegetation.

**Reporting:** A single report will be prepared concerning the RCW monitoring components. The annual report will minimally include the following:

- A description of the methods used for each survey component including dates of survey.
- For RCW Preserve, a narrative description of cavity use, daily activities and foraging movements along with a description of foraging paths and locations; a narrative description of the type of other RCW occurrence/signs.
- For the "annual" survey of remaining areas, a description of RCW occurrence/signs along with locations of same.
- For slash pine plantings, a tabulation of survey results and a discussion of the relative progress of plantings.

The report of monitoring results will be submitted to Lee County Division of Environmental Sciences (or its successor), Southwest Florida Regional Planning Council (SWFRPC) and the

Florida Game and Fresh Water Fish Commission (GFC) within thirty (30) days after completion of field surveys.

All monitoring will be conducted by a qualified biologist. The RCW Preserve monitoring program will be implemented upon initiation of Phase 1-B construction and will be continued for a ten-year period. However, should a monitoring event indicate abandonment of the RCW Preserve within the initial ten-year period, the monitoring will be continued for an additional nine (9) consecutive monitoring years. Upon documentation of abandonment evidenced by ten (10) consecutive years of monitoring, RCW monitoring and habitat management will cease. The annual site-wide monitoring program will continue until completion of development. However, should colony re-activation occur or a new colony be found, the RCW monitoring and management plan described herein will be reinitiated or a new plan submitted to Lee County Division of Environmental Sciences, or successor, for review and approval.

The pine planting monitoring will be implemented upon completion of pine planting and will be continued for a three-year period to document establishment of plantings (total four events). Supplemental pine plantings will be performed if the estimated percent survival of all pine plantings is found to be below 80% during an annual monitoring event. A letter report documenting any supplemental plantings will be submitted to the Lee County Division of Environmental Sciences, or its successor, within thirty (30) days following completion of the planting.

## **6.0 PROVISIONS**

In the event that Red Cockaded Woodpeckers totally abandon the RCW Preserve for ten (10) consecutive years as evidenced by the monitoring described in Section 6.0, the developer may request an adjustment to the 21.3 acres of upland pine flatwoods contained in the RCW Preserve by filing a Notice of Proposed Change. Reconfiguration of the RCW Preserve or Wetland area will be reviewed in accordance with F.S. 380.06(19).

## **Exhibit D**

### **REVISED WETLANDS MANAGEMENT PLAN FOR THE HERONS GLEN DRI (F.K.A DEL VERA, VILLAGES OF NANTUCKET, AND DEL TURA NORTH)**

**JULY 2000<sup>1</sup>**

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<sup>1</sup> Note: This Plan constitutes an amendment of the previously adopted Plan approved May 29, 1990. A copy of the strike-thru and underline version is available at the Department of Community Development. However, for ease of use and reference, the strike-thru and underline has been removed from this exhibit.



# REVISED WETLANDS MANAGEMENT PLAN FOR THE HERONS GLEN DRI (f.k.a DEL VERA, VILLAGES OF NANTUCKET, DEL TURA NORTH)

July 2000

## INTRODUCTION

The Del Tura North DRI (Del Vera) was approved by the Board of County Commissioners on April 25, 1988. Condition F.2 of that Development Order (DO) required the preparation of a Wetland Management Plan prior to the issuance of surface water management permits. Condition 2.d of Lee County Resolution No. Z-88-069 also required a plan for the removal of exotic vegetation. A wetland management plan incorporating exotic vegetation removal was prepared by Dr. Eric J. Heald in February of 1989 and approved by the County as part of their amended final DO on May 29, 1990. This plan addressed at a conceptual level the removal of exotic species, the maintenance of wetland hydroperiod and the creation of a shallow lake "refugia" within the central flow-way.

Subsequent to the approval of the Final Development Order and the Wetlands Management Plan, two Red Cockaded Woodpeckers (RCWs) were found on the site which triggered the requirement to revise the RCW Management Plan. In order to provide additional habitat and foraging areas for these birds, it was recommended by the Lee County staff that the proposed shallow lakes be eliminated from the Wetlands Management Plan. Additionally, more detail was requested on wetland hydroperiod maintenance, exotic vegetation control methods and success monitoring. Conservation Consultants, Inc. (CCI) subsequently prepared a document dated September 11, 1992 titled "*Amended Wetlands Management Plan for Del Vera and Villages of Nantucket (formerly Del Tura North)*". The CCI document amended the approved 1989 plan to reflect the requested change and provide additional detail on certain plan elements.

The purpose of this document is to further revise the exotic removal provisions of the Wetlands Management Plan. Such revisions are necessary due to a time delay in initiating exotic removal activities by the previous site owner. This delay resulted in the continued spread of *melaleuca* and continued degradation of habitat quality. Initiation and completion of the *melaleuca* removal methods described herein will result in compliance with the exotic eradication conditions of the DRI development order, the Lee County development order, and the South Florida Water Management District (SFWMD) permit. The proposed plan

is also be consistent with the RCW Management Plan for the project and will serve to substantially increase the quality of RCW habitat.

## **1.0 EXOTIC PLANT CONTROL**

*Melaleuca* is the primary exotic invader species impacting the site. Invasion by this species ranges from scattered individuals to dense stands where native ground cover and shrub species have been largely excluded. However, belt transect surveys previously conducted by CCI within six dense *Melaleuca* stands in or adjacent to the northern area of central flow-way revealed mature pine tree (>4" DBH) densities similar to largely uninfested transition pine flatwoods in the same region of site. In May 1999, random transects were walked by Florida Environmental Incorporated (FEI) to assess the current conditions of preserve and wetland areas at Herons Glen. Over 50% of preserve areas were observed to have medium to heavy infestations of *Melaleuca*. Given the general low density of desirable understory and ground cover vegetation within the areas of medium to heavy infestation, it would be appropriate to consider the use of mechanical reduction equipment as one part of the overall eradication program.

The program for short- and long-term control of both scattered, individual *Melaleuca* within wetland preserves and identified dense stands are described below.

*Melaleuca* and other exotics within development areas, road right-of-way, golf course and open space will be removed at the time of site development and control will be accomplished as part of routine landscape and golf course maintenance.

### **1.1 Short-Term Program**

The objective of the short-term program will be to eliminate the majority of the mature "seed source" *Melaleuca*. For stands in the vicinity of the RCW colony, the objective is to further eliminate the *Melaleuca* with minimal disturbance to remaining pines. Retaining mature pines while removing surrounding, dense *Melaleuca* infestations will immediately increase available RCW foraging areas.

#### **1.1.1 Initial Eradication in Medium to Heavy Infestation Areas**

Dense stands of *Melaleuca* and other exotic species will be reduced in place using mechanized equipment (e.g., bush hog, Hydroaxe, or grinder/mower). It is estimated that mechanized equipment will be used in approximately 50% of the total acreage of the

preserves (*i.e.*, medium to heavy infestation areas). Mechanized equipment within the preserve areas would be limited to rubber tire or rubber track tractors to minimize impacts to the ground surface. In order to accomplish this goal, such operations will be conducted when there is no standing water (*i.e.*, during the dry season or during portions of the wet season when water levels are below ground). In order to minimize damage to native tree, shrub, and ground cover plant species, labor crews will work within drip lines of native trees greater than 3" in diameter in advance of mechanized equipment.

Labor crews will follow mechanical reduction operations, treating cut stumps with herbicide and girdling material larger than 6" in diameter. Herbicide treatment of the whole circle of cambium layer of cut stumps will occur within 48 hours. The herbicide solution will contain a dye to ensure that all stumps are adequately treated. Girdled material would be left standing as part of the initial eradication program. Herons Glen reserves the right to remove dead trees to improve the overall aesthetics of the project. Stands of *Melaleuca* less than 6" in diameter will be cut into 3 to 6-foot lengths and stacked in accordance with guidelines of the SFWMD. All cut material will be removed from areas located within 75 feet of the preserve boundary.

#### **1.1.2 Initial Eradication in Light to Medium Infestation Areas**

Hand removal methods for *Melaleuca* removal will be utilized in areas with light to medium infestation. These areas are estimated to occupy approximately 50% of the total acreage of the preserves. Labor crews will use chain saws (or machetes) to cut medium-sized trees by hand while smaller trees will be hand-pulled. Cut stumps will be treated with herbicide within 48 hours. The herbicide solution will contain a dye to ensure that all stumps are adequately treated. Trees larger than 6" in diameter will be girdled and left standing as part of the initial eradication program. Herons Glen would reserve the right to remove dead trees to improve the overall aesthetics of the project. All other material (trees <6" in diameter) will be cut into 3 to 6-foot lengths and stacked in accordance with guidelines of the SFWMD. All cut material will be removed from areas located within 75 feet of the preserve boundary.

Remaining portions of the site's Resource Protection Areas (RPAs) consist primarily of freshwater marshes located to the east of the central flow-way (Figure 1). The majority of these areas have light to medium infestation by *Melaleuca*. Removal methods in these areas will be identical to those described above for light to medium infestation areas.

### **1.1.3 Areas of Special Concern**

Care will be taken to avoid damage to existing pine trees >3" in diameter and to restrict operations within buffer zones around active or start-hole RCW cavity trees. A buffer zone with a radius of 100' will be established around each active or start-hole cavity tree and activities within this zone will be limited to hand removal operations (*i.e.* no mechanized equipment will be used). For inactive and abandoned RCW cavity trees, mechanized equipment will not be utilized inside of the drip line of the trees. During the RCW nesting season (April through June), no removal activities will be conducted within 700' of active RCW cavity trees.

A professional biologist retained by Herons Glen will verify the location of active RCW cavity trees and field delineate buffer areas around those trees. The reduction of *melaleuca* within foraging areas of the RCW will improve the overall habitat quality for this species.

### **1.1.4 Implementation Schedule for Short-Term Eradication Program**

Implementation of the above-described short-term program within Herons Glen will be completed within one (1) year of approval of this revised plan. *[Note: Initial felling and herbicidal treatment of exotics was completed in the majority of wetland preserves of the site in mid-2000 following submittal of the initial draft of this Revised Wetlands Management Plan. Thus, most of the activities associated with the Short-Term Program, as described above, were already completed at the time of final approval of this revised plan].*

## **1.2 Long-Term Program**

The long-term program for *Melaleuca* control will have two elements: (1) semi-annual inspection/control events for all wetland preserves and upland habitat preserves for three consecutive years following completion of the short-term program; and (2) annual inspection/control events thereafter aimed at habitat maintenance. Additional habitat maintenance measures (*e.g.*, prescribed burning) are also associated with the RCW management program (refer to the "*Revised Red-Cockaded Woodpecker Monitoring and Management Plan*" dated July 2000).

### **1.2.1 Semi-Annual Inspection and Control Events**

During the semi-annual inspection events, each of the areas previously exhibiting dense *Melaleuca* stands will be specifically visited to appraise re-invasion, *i.e.*, seedling establishment and/or sprouting. At the time of inspection or within thirty (30) days,

seedlings will be hand-pulled or cut and chemically treated. Re-sprouts will receive foliar treatment using an appropriate herbicide solution containing dye to ensure thorough coverage. Also, during each semi-annual event, the remaining wetland and upland preserves will be inspected and control performed in the same manner as described for the long-term program.

### **1.2.2 Annual Habitat Maintenance**

Starting the fourth year following completion of the short-term program, annual inspection and maintenance events will be conducted. Methods utilized to suppress and control the growth of exotics will be the same as cited above in Section 1.2.1. Long-term management objectives with respect to the RCW Preserve including fire and/or mechanical habitat maintenance, will also assist in prevention of *Melaleuca* and/or exotic plant species reinvasion. Further, the below described wetland hydroperiod maintenance efforts will contribute to long-term control of *Melaleuca* in wetland preserves.

## **2.0 WETLAND HYDROPERIOD MAINTENANCE**

Wetland hydroperiod maintenance will consist of the following:

### **2.1 Design Considerations**

The hydroperiod of preserved wetlands will be maintained or enhanced by incorporating the wetlands into the site's surface water management system. The system will use manmade lakes and the preserved freshwater marshes for stormwater detention and attenuation. The transition pine flatwoods will receive discharges from a portion of the surface water management system and continue to serve as "flow-ways".

The concepts for completing engineering design for the remainder of the site will be as described in surface water management permitting for Phase I-A of the project. Basically, the design concept is to set water control elevations for any outflows from or through wetlands to approximate wet season groundwater elevations.

### **2.2 Understory Control**

Freshwater marsh preserves have experienced variable encroachment by wax myrtle (*Myrica cerifera*) and dog fennel (*Eupatorium capillifolium*) in addition to some *Melaleuca* at their margins. Site observations also indicate that wax myrtle is a significant component in the transition pine flatwoods preserves.

Control or at least containment of the encroaching understory species within freshwater marshes will be aided by implementation of the previously described wetland hydroperiod maintenance concepts. Transition pine flatwoods preserves should also benefit from increased inputs of fresh water. Additionally, prescribed burns of the central flow-way in association with RCW habitat management will contribute to understory control.

### **3.0 MONITORING AND REPORTING**

Monitoring and reporting requirements will consist of the following:

#### **3.1 Exotic Plant Control**

A report of exotic plant control efforts will be submitted to the Lee County Division of Environmental Services, or its successor, within thirty (30) days following the completion of the short-term event and each long-term control event described above. Each monitoring report will contain the following:

- a) A map showing location of and identification number of each freshwater marsh preserve and each "dense *Melaleuca* stand" control area.
- b) Photographs from a fixed reference point following the control event at each site receiving control efforts.
- c) A brief narrative describing exotic plant re-invasions and control efforts at each photographed site.
- d) A narrative describing exotic plant re-invasion and control efforts for the remainder of the site (or Phase area as appropriate).

## FIGURE 1