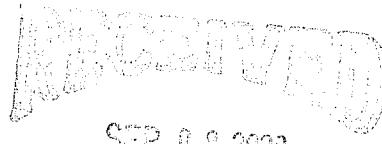


September 8, 2008

Mr. Matt Noble, Principal Planner  
Division of Planning  
Lee County Department of Community Development  
P.O. Box 398  
Fort Myers, FL 33902-0398

**RE: Babcock Ranch Community (CPA2006-08)**



Dear Mr. Noble:

COMMUNITY DEVELOPMENT

On behalf of the applicant, Babcock Property Holdings, LLC, we have prepared the following response to your letter, dated September 3, 2008, which informed us that the above-referenced case was to be carried over into next year's regular amendment cycle. For reference purposes, we have included below in our response the associated text from your correspondence (in *italics*).

*Division of Planning: The applicant has not addressed the previous June 5, 2008 staff insufficiency letter. Planning staff finds the above mentioned case is still insufficient and further information is needed.*

**RESPONSE:** The applicant acknowledges that additional information is needed in order for the application in the above-referenced case to be deemed sufficient. However, the applicant disagrees with staff's assessment that there has not been a response to the June 5, 2008, insufficiency letter.

First, the applicant has worked closely with staff to draft a memorandum of understanding (MOU) establishing the process by which the current and future Lee Plan amendments will be processed to satisfy the requirements of the Community Road Planning Agreement. The final MOU was submitted to staff on August 27, 2008.

Second, the applicant has coordinated with staff to prepare a proposed text amendment to Lee Plan Policy 36.1.1 to codify the process by which Lee Plan Map 3A will be updated to reflect the roadway improvements associated with the Babcock Ranch Community (BRC) and to distinguish between the BRC-related improvements and the remainder of Map 3A. The final text amendment language was deemed sufficient by staff on August 4, 2008.

Third, the applicant on August 29, 2008, submitted for staff's review a complete traffic analysis and list of road improvements based on the approved FDOT District Model. Although the applicant recognizes that staff has raised technical issues relating to the

*Sufficiency Response Cover Letter  
Babcock Ranch Community (CPA2006-08)  
September 8, 2008  
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traffic analysis, and is prepared to work with staff to resolve those issues, the actions cited above represent a good-faith effort on the part of the applicant to respond to staff's June 5, 2008, insufficiency letter. It is the applicant's position that staff's finding of non-responsiveness fails to consider the substantial progress made in this case during the past four months.

*Division of Planning: It was noted in the June 5, 2008 insufficiency letter that the Board of County Commissioners plan a transmittal public hearing in October and amendments not through the Local Planning Agency by the September meeting would have to be considered in next year's round of amendments. A response now would not allow sufficient time for the staff to review the submittal and draft a staff report for the September Local Planning Agency public hearing.*

**RESPONSE:** The applicant acknowledges the timeline established by the Board of County Commissioners (BOCC) for the current Lee Plan regular amendment cycle. However, the terms and conditions of the MOU, the governing provisions of the Community Road Planning Agreement, and the BOCC's action of April 11, 2007, warrant special consideration on the part of staff and the County Administrator for this case.

Specifically, as we discussed on September 4, 2008, we agree that this case should be pulled from the regular amendment cycle and processed as a Special Amendment, pursuant to Section AC-13-6.B.4.d of the Lee County Administrative Code.

This would enable the applicant to coordinate with staff to resolve the remaining technical issues, without the undue delay associated with being carried over into next year's regular amendment cycle.

Concurrent with this Lee Plan amendment application, the applicant is pursuing approval for the first increment of the BRC Development of Regional Impact. The first increment application will be submitted in the fall of 2008 with an expected approval in the summer of 2009.

Carrying over the current Lee Plan amendment into next year's regular cycle would, in effect, delay adoption of this plan amendment until 2010, a year after the anticipated approval of the first increment. It would be more timely for this plan amendment to be reviewed prior to or concurrent with the first increment.

Therefore, the applicant requests that Lee County act in good faith to process the current Lee Plan amendment case in a reasonable time frame, as called for under the MOU and the Community Road Planning Agreement.

*Sufficiency Response Cover Letter*  
*Babcock Ranch Community (CPA2006-08)*  
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*Page 3*

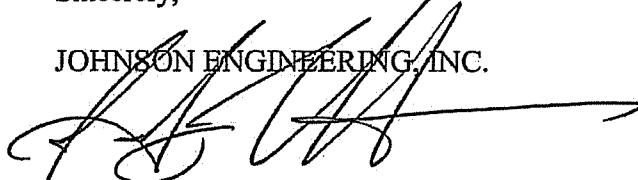
In support of this case being processed as a Special Amendment, we have enclosed with this letter the documents mentioned above, e.g., the MOU, the proposed text amendment to Policy 36.1.1, and the traffic analysis/road list based on the FDOT District Model.

The purpose of this submittal is to update the application file so that we may proceed with the Special Amendment cycle, as well as to formally respond to your letter dated September 3, 2008, and the June 5, 2008 insufficiency letter. We will amend the application into a codified version once staff has signed-off on the traffic analysis and road list.

Please contact me if you have questions. Thank you for your consideration.

Sincerely,

JOHNSON ENGINEERING, INC.



A handwritten signature in black ink, appearing to read "J.W. Grubbs".

Joseph W. Grubbs, Ph.D., AICP  
Principal Planner

Enclosures

cc: Steve Webb, Kitson Babcock, LLC  
Erica Chutkan, Esq., Kitson Babcock, LLC  
Russell Schropp, Henderson, Franklin, Starnes & Holt, P.A.  
Mark Gillis, David Plummer & Associates  
Stephen Leung, David Plummer & Associates

JWG:jrs/20066201-010

# **Memorandum of Understanding**

20066201

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING ("MOU")**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between: BABCOCK PROPERTY HOLDINGS, LLC (hereinafter "Developer"), a Delaware liability company, whose address for purposes of this MOU is 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418; the BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT (hereinafter "ISD"), an independent special district of the State of Florida created pursuant to Chapter 2007-306, Laws of Florida, whose address for purposes of this MOU is 12051 Corporate Boulevard, Orlando, FL 32817; and LEE COUNTY, a political subdivision of the State of Florida (hereinafter, "County"), whose mailing address for purposes of this MOU is P.O. Box 398, Fort Myers, FL 33902-0398 (Developer, ISD and County being hereinafter referred to as "the Parties").

### **RECITALS**

WHEREAS, Developer received Master Development Order ("MDO") approval pursuant to Section 380.06(21), Fla. Stat., from Charlotte County on December 13, 2007, for a Master Development of Regional Impact known as Babcock Ranch Community ("BRC DRI"); and

WHEREAS, the BRC DRI provides for the development at buildout of a maximum of 17,870 dwelling units and 6,000,000 square feet of non-residential uses, along with various ancillary, institutional, and educational uses, on 13,630 acres of land, all as more particularly set forth in the MDO; and

WHEREAS, the BRC DRI is located in southeastern Charlotte County, immediately north of and adjacent to Lee County; and

WHEREAS, development of the BRC DRI is anticipated to have traffic impacts upon existing and planned roadways in Lee County; and

WHEREAS, Developer (through its predecessor-in-interest MSKP III, Inc.) and County have previously entered into that certain agreement entitled "Babcock Ranch Community Road Planning Agreement" dated May 23, 2006 (the "Community Planning

Agreement") in order to, among other things, (a) refine and revise a master list of roadways in Lee County that may be impacted by the BRC DRI that was initially identified in a Development Agreement between Developer and Charlotte County, such revisions to be based upon a new Bi-County Traffic Model agreed to between the Parties, and (b) provide for the necessary amendments to the Long-Range (2030) Financially Feasible Transportation Map ("Map 3A") of the Lee County Comprehensive Plan ("Lee Plan"); and

WHEREAS, the Parties have agreed that the Districtwide (D1) Travel Model developed by the Florida Department of Transportation and approved by the Technical Advisory Committee for the Joint Collier-Lee Metropolitan Planning Organization ("MPO") is acceptable for use as the Bi-County Traffic Model required by the Community Planning Agreement (said model being hereinafter referred to as the "FDOT District Model"); and

WHEREAS, Developer desires to proceed forward with its first application for incremental development approval ("First Increment") pursuant to the MDO; and

WHEREAS, the MDO requires the Developer to periodically update its Master Traffic Study Update(s); and

WHEREAS, the ISD has been created by the Florida Legislature to, among other things, provide for the future funding of capital improvements necessary or beneficial for the BRC DRI; and

WHEREAS, the Parties desire to establish and have agreed upon a "process" for the review and acceptance of the revised buildout list of potentially impacted roadways in Lee County, the incorporation of that revised buildout list into Map 3A of the Lee Plan,

the review of the traffic impacts associated with the First Increment and future increments, and the incorporation of roadway and funding commitments made by Developer into the Capital Improvements Program ("CIP") and Capital Improvements Element ("CIE") of the Lee Plan; and

WHEREAS, the Parties desire to memorialize their understanding of the "process" upon which they have agreed;

NOW, THEREFORE, in recognition and fulfillment of the foregoing Recitals, Developer, ISD and County agree as follows:

1. **RECITALS.** The Parties agree that the above Recitals are true and correct to the best of each Party's knowledge, and said Recitals provide the foundation for this MOU and the process for addressing roadway impacts from BRC DRI on roadways within Lee County.

2. **PROCESS FOR ADDRESSING ROADWAY IMPACTS ON LEE COUNTY ROADWAYS:** Consistent with and in furtherance of the Community Planning Agreement, the MDO, Section 380.06 and Chapter 163, Fla. Stat., the Parties will follow the process set forth below in analyzing and addressing the traffic impacts on roadways within Lee County associated with the BRC DRI:

A. **Revised Buildout List:** As of the date of this MOU, Developer has undertaken and submitted to County an updated comprehensive plan amendment level traffic analysis of the impacts of the BRC through buildout (year 2030) utilizing the FDOT District Model, and its 2030 financially feasible road network, from which a revised buildout list of potential road improvements within Lee County has been identified (hereinafter, the "Updated Preliminary Road Improvements"). The intent of

this updated traffic analysis is to fulfill the Developer's obligations under the Community Planning Agreement and to provide a mutually acceptable list of roadway improvements which may be undertaken or funded by the Developer or the ISD as traffic mitigation for future incremental development orders.

B. Plan Amendments to Reflect Revised Master List. The County will use its best good faith efforts to process during the County's current round (2008-09) of plan amendments ("Current Round Amendments"): (a) a map amendment to Map 3A of the Lee Plan to reflect the Updated Preliminary Road Improvements list identified pursuant to paragraph 2.A. above, and (b) a text amendment to Policy 36.1.1.of the Lee Plan to reflect a distinction between the Updated Preliminary Road Improvements list which may be required for the BRC DRI and the remainder of Map 3A which is based on the 2030 financially feasible map adopted by the MPO. The plan amendments will reflect that the potential funding source for the Updated Preliminary Road Improvements list will be the ISD, and the ISD is joining as a party to this MOU to acknowledge and consent to being identified as such. Inclusion of the Updated Preliminary Road Improvements list on Map 3A will establish the framework and basis for identifying future roadway improvements in Lee County that may be made or funded by Developer or the ISD pursuant to incremental development orders that may be adopted for the BRC DRI. In the event that the plan amendments contemplated by this paragraph cannot be processed by the County during the Current Round Amendments despite the Parties' best good faith efforts to accomplish same within the timeframes set forth above, the County will process the amendments as expeditiously as possible during the next available opportunity to process such amendments.

C. First Incremental Traffic Analysis. Developer has indicated that it intends to submit an application for incremental development approval for the First Increment for the BRC DRI in the Fall of 2008. Pursuant to the MDO, the Developer will utilize the methodology agreed to by the Developer, the County, Charlotte County, the FDOT and the Southwest Florida Regional Planning Council to assess the traffic impacts of the First Increment and to identify anticipated impacts to Lee County roadways, if any, that will need to be mitigated pursuant to Section 380.06, Fla. Stat., and rules adopted pursuant thereto. Any such mitigation required to be made by Developer will be consistent with the Updated Preliminary Road Improvements list as identified in paragraph 2.A above, as may be updated from time to time pursuant to paragraph 2.D below, and will be the subject of a future Development Agreement or Roadway Construction Agreement to be entered into between the ISD and County. The County will promptly amend its CIP to reflect commitments contained within such Development Agreements or Roadway Construction Agreements entered into between the County and the ISD. During the County's next available plan amendment cycle, the County will process amendments to the Lee Plan CIE that will reflect the amendments to the CIP made pursuant to this paragraph. It is anticipated by the Parties that these plan amendments to the CIE will occur during the 2009-10 plan amendment cycle.

D. Periodic Traffic Analysis Updates. The Parties acknowledge that the MDO requires Developer to conduct an update to its Master Traffic Study within one year of the availability of the FDOT District Model and its "existing plus committed" (E+C) roadway network, with further updates required no less than every five years thereafter. These periodic updates are intended to update the Updated Preliminary Road

Improvements list anticipated to be needed for the BRC DRI based upon consideration of the then-current E+C roadway network plans. The first periodic update is anticipated to be due from Developer on or before July 1, 2009. Upon review and acceptance of these periodic updates, the County will expeditiously process any amendments to Map 3A necessary to reflect the update to the Updated Preliminary Road Improvements list within Lee County which is anticipated to be needed as a result of the buildout level of development in the BRC DRI, unless both Developer and County agree that any such changes to Map 3A would be insignificant or of low priority. Amendments to Map 3A made necessary by these periodic updates will be processed by the County in its next regularly scheduled round of plan amendments. It is anticipated by the Parties that any amendments required after the initial periodic update due on July 1, 2009, will be processed by the County during the 2009-10 regular plan amendment cycle. The ISD will continue to be identified as the potential funding source for those improvements on Map 3A which may be deemed necessary by the incremental DRI development orders to mitigate the traffic impacts of the BRC DRI on roadways within Lee County, unless the Parties agree otherwise in writing.

E. Additional Applications for Incremental Development Approval.

Impacts on roadways within Lee County associated with future applications for incremental development approval ("Future Increments") will be processed and addressed in the same manner as set forth in paragraph 2.C. above. Mitigation for impacts to roadways within Lee County that is required for Future Increments will be consistent with the Updated Preliminary Road Improvements list as identified in paragraph 2.A and as may be updated from time to time. Required mitigation will be

addressed through a Development Agreement or Road Construction Agreement entered into between the ISD and the County, and the County will process amendments to the Lee Plan CIP in its next regularly scheduled round of plan amendments to reflect the roadway and funding commitments made by Developer pursuant to such agreements.

**3. FULFILLMENT OF COMMUNITY PLANNING AGREEMENT**

**REQUIREMENTS.** The Parties acknowledge that one of the purposes of this MOU is to identify the process that will lead to the fulfillment of the requirements of the Community Planning Agreement. Upon completion of the initial Updated Preliminary Road Improvements list of impacted roadways within Lee County pursuant to paragraph 2.A. above and adoption of the plan amendments to Map 3A and Policy 36.1.1 pursuant to paragraph 2.B. above, the requirements of the Community Planning Agreement will be deemed fulfilled by the Parties, and neither party will have any further obligation to the other thereunder.

**4. EFFECT OF MOU.** The terms of this MOU do not supersede any substantive or procedural requirements of Florida law including but not limited to Sections 163.3184-.3189, 163.3220-.3243, and Section 380.06, Fla. Stat. Any comprehensive plan amendments identified in this MOU will be processed in accordance with the procedural and substantive requirements of Sections 163.3184-.3189, and no provision of this MOU will be interpreted or construed to require the County to approve any amendment unless it fully complies with the requirements of said statutes and rules adopted pursuant thereto. Likewise, any traffic analysis required by this MOU to assess the impacts of the BRC DRI, and mitigation required to address those impacts, will be conducted in accordance with Section 380.06 and rules adopted pursuant thereto. The

purpose of this MOU is to guide, direct, and facilitate the actions of the Parties in addressing the future impacts of the BRC DRI on roadways within Lee County, and the Parties agree to follow the process set forth above unless the Parties modify, abate or terminate the process by mutual agreement or understanding.

**5. RECORDATION IN PUBLIC RECORDS.** This MOU will not be recorded in the Public Records of Lee County, Charlotte County, or any other county in the State of Florida.

**6. EFFECTIVE DATE.** The effective date of this MOU is the date on which the last Party to execute this MOU has signed this MOU, as reflected by the dates signed below each Party's signature.

IN WITNESS WHEREOF, the Parties have caused the execution of this MOU by their duly authorized officials as of the day and year written below.

James - Jrco  
Witness Signature

James - Jrco  
Witness Name

Erica S. Chwtkan  
Witness Signature

Erica S. Chwtkan  
Witness Name

BABCOCK PROPERTY HOLDINGS, LLC,  
a Delaware limited liability company

By: Tom Danahy  
Tom Danahy, President

Date: 9/7/08

BABCOCK RANCH COMMUNITY  
INDEPENDENT SPECIAL DISTRICT , an  
independent special district of the State of  
Florida

By: Neal Blackletter

Witness Signature

H Fishkind

Witness Name

Dr. Matthews Smith II

Witness Signature

M. Matthews Smith II

Witness Name

NEAL BLACKLETTER

(Print or Type Name and Title) Chairman, Board of Supervisors

Date: 9/4/2008

LEE COUNTY, a political subdivision of  
the State of Florida

By: \_\_\_\_\_

Ray Judah, Chairman

Date: \_\_\_\_\_

ATTEST:

CHARLIE GREEN, CLERK

By: \_\_\_\_\_

Deputy Clerk

\_\_\_\_\_  
(Type or Print Name)

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant Lee County Attorney

## **Proposed Text Amendment**

**THE BABCOCK RANCH COMMUNITY  
LEE COUNTY COMPREHENSIVE PLAN AMNEDMENT  
PROPOSED TEXT AMENDMENT**

**POLICY 36.1.1:** The Lee County MPO's 2030 Financially Feasible Plan Map series is hereby incorporated as part of the Transportation Map series for this Lee Plan comprehensive plan element. The MPO 2030 Financially Feasible Highway Plan Map, as adopted December 7, 2005 and as amended through March 17, 2006, is incorporated as Map 3A of the Transportation Map series, with the following additions anticipated to be needed to support the development of the Babcock Ranch Community DRI in Charlotte County and all area development through 2030:

Roadway Segment	Improvement
XXXX	XXXXX
XXXX	XXXXX

Funding sources and actual funding for the above listed improvements will be identified and programmed at the point they are required based on the DRI incremental development approvals. It is anticipated that the funding source for the cost of the above listed road improvements being added to Map 3A is the Babcock Ranch Community Independent Special District.

Also, the comprehensive plan amendment analysis for the Simon Suncoast (Coconut Point) DRI identified the need for improvements at key intersections on US 41 from Estero Parkway to Alico Road to address the added impacts from the project for year 2020, and a mitigation payment has been required as part of the DRI development order. Lee County considers the following intersection improvements to be part of Map 3A and will program the necessary funds to make these improvements at the point they are required to maintain adopted level of service standards on US 41 if they have not been addressed by FDOT;

Intersection	Improvements
US 41/Constitution Boulevard	Southbound Dual Left Turn Lanes
US 41/B & F Parcel Northbound,	Southbound, Eastbound, and Westbound Dual Left Turn Lanes
US 41/Sanibel Boulevard	Southbound Dual Left Turn Lanes
US 41/ Estero Parkway	Southbound and Westbound Dual Left Turn Lanes

(Amended by Ordinance No. 98-09, 99-15, 02-02, 02-29, 03-19, 07-11)

## **Traffic Data and Road List**











