



# EXHIBITS

from HEX hearing

CASE #: DCI 2005-00055

CASE NAME: Diplomat Property

**Attach a copy of this form to the top of packet of the exhibits & place exhibits in case file.**

**ARE THERE ANY BOARD EXHIBITS?        YES      X   NO**

**LOCATION OF BOARDS:**

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**If there are any board exhibits, attach another copy of this form to boards for identification purposes.**

# EXHIBITS

## APPLICANT

- #1 MCP
- #2 Zoning Map
- #3 A Flum
- #4 <sup>30</sup> Aerial
- #5 Definition of "Strip Dev"  
from MoneyGlossary.com
- #6 Post Hrg Submittal-MCP  
+ Cond. 17 language
- #7 \_\_\_\_\_
- #8 \_\_\_\_\_
- #9 \_\_\_\_\_
- #10 \_\_\_\_\_

## OTHER EXHIBITS

### NAME

- #1 \_\_\_\_\_
- #2 \_\_\_\_\_
- #3 \_\_\_\_\_
- #4 \_\_\_\_\_
- #5 \_\_\_\_\_

## STAFF

- #1 aerial photo
- #2 photos of bobcat
- #3 Description of Panther
- #4 Notes for Jotz Presentation
- #5 New Dev in 6
- #6 Staff Photos
- #7 Article on Strip Devs
- #8 Resolution 2-01-014
- #9 Commercial Uses on US41
- #10 Rentz Memo
- #11 - Post Hrg. Submittal - <sup>Memo in</sup> Response  
to Applicant's revised MCP  
+ Cond. 17 language.

### NAME

- #1 \_\_\_\_\_
- #2 \_\_\_\_\_
- #3 \_\_\_\_\_
- #4 \_\_\_\_\_
- #5 \_\_\_\_\_

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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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Staff photos  
By TONY  
PALERMO  
Senior  
Planner



Diplomat Parkway.

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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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- ◆ Rezone 65 +/- acres of land from Agricultural (AG-2) to Residential Planned Development/Commercial Planned Development (RPD/CPD) to permit a maximum of 468 dwelling units, 200,000 square feet of commercial floor area and a maximum of 120 hotel rooms. Maximum building height proposed is 3 stories/50 feet commercial and 3 stories/35 feet residential.
- ◆ Dec. 23, 2005 Staff report.
- ◆ Central Urban (10 units per acre)
- ◆ Agricultural (AG-2) zoning. No ag uses or exemptions.
- ◆ Staff recommends approval with conditions.
- ◆ Staff recommends approval of 5 deviations with conditions.
- ◆ Condition 3 should read: **No agricultural uses exist on site and none are approved by virtue of this rezoning.** (page 9)



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

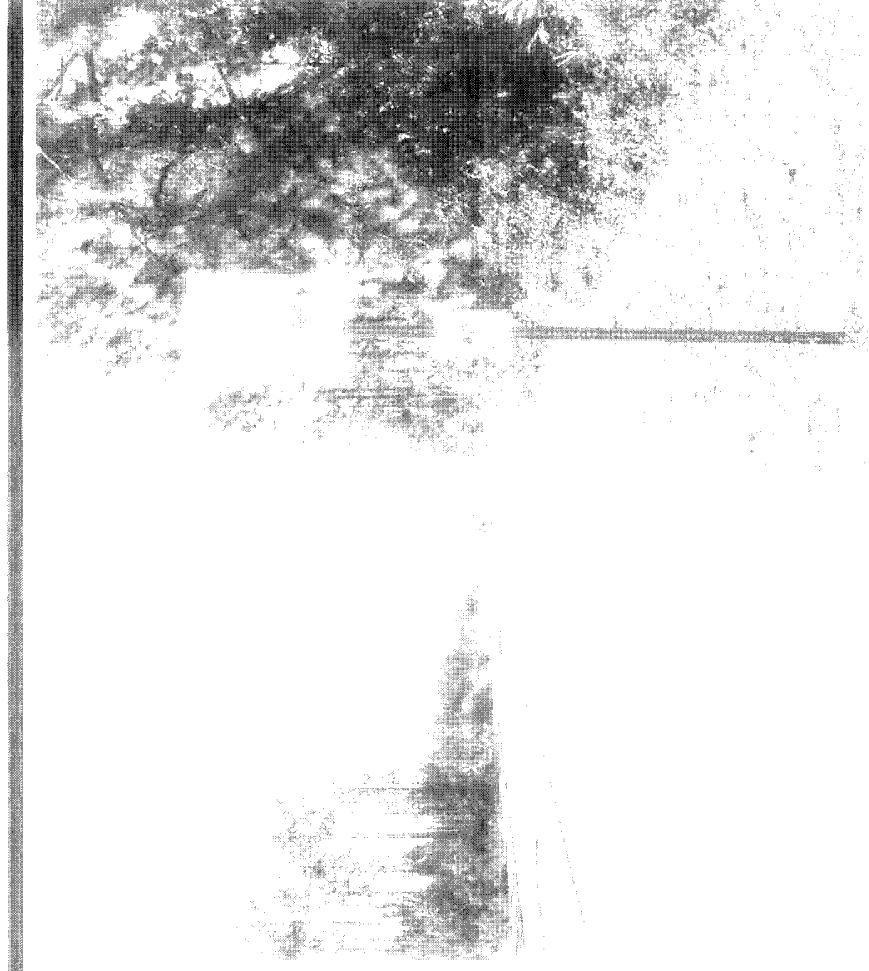
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Issue #1  
Commercial Strip  
Development

Page 14.  
Policy 6.1.7 discourages  
commercial strip development.

1,900 feet.

See Condition 13. A-D.



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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### Issue #2

Towers and other Uses.

Page 14.

- Not enough detail to support some uses.

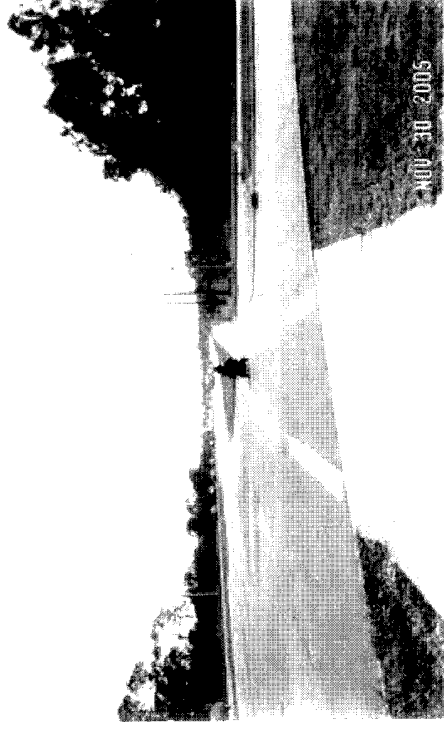
- Compatibility issues.

- Saturation issues.

- Auto Service Station, Boat Sales, Car Wash, Convenience Food & Beverage Nightclub, Package Store, Recycling Facility, Towers, Fuel Pumps, Warehouse



NOV 30 2005



NOV 30 2005

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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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Issue #3 Buffering (p. 15)

Type B Buffer proposed.  
15 feet. 5 trees per 100 feet.

Enhance 30 feet. 10 trees.  
Canopy Trees.

See Condition 13. E



05-30-2005

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# DCI2005-00055 DIPLOMAT

## RPD/CPD

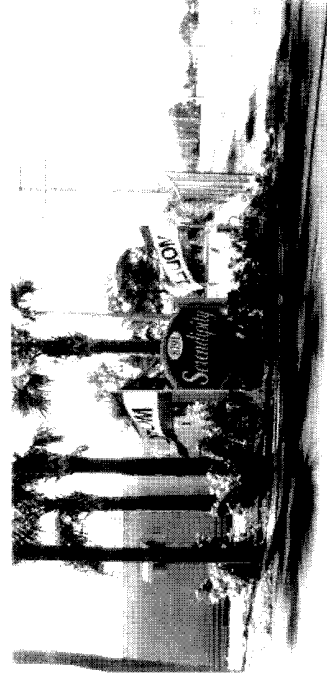
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Issue #4 Density.

Six Lakes – 5 per acre.  
Serendipity – 6 per acre.

65 acres total.  
49 residential. 16 commercial.  
Request: 468 units (9.578 units  
per acre)

Staff supports 8 units per acre.  
54 acres of residential. 432 units.



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

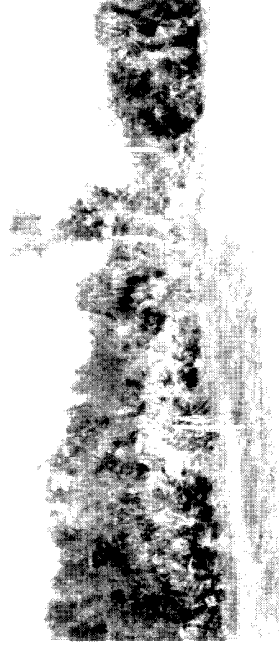
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LEE PLAN Page 15-20

Policy 5.1.5, 139.9.5 - Compatibility

Policy 6.1.7 - Strip Commercial

Policy 6.1.2 Site Location standards.



### NEIGHBORHOOD COMPATIBILITY

Page 21-23

North - Serendipity Mobile Home Park.

South - Merchant's Crossing.

East - Agriculture, Horses, US 41.

West - Six Lakes Country Club.

West of this is the City of Cape Coral.



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

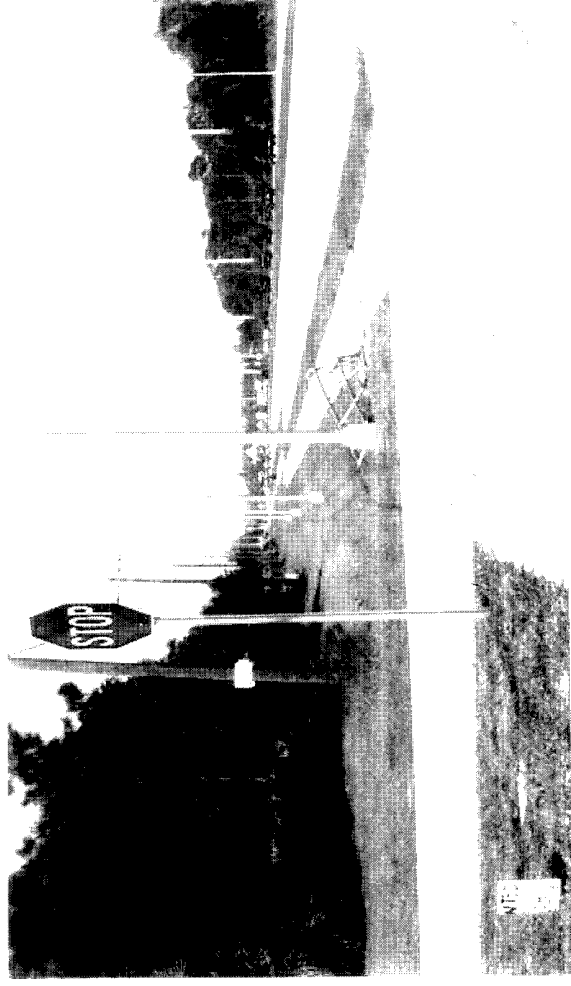
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### TRAFFIC

DIPLOMAT – ARTERIAL.  
US 41 – ARTERIAL (FDOT)

DEVELOPMENT  
SERVICES  
COMMENTS.

NO LOS ISSUE



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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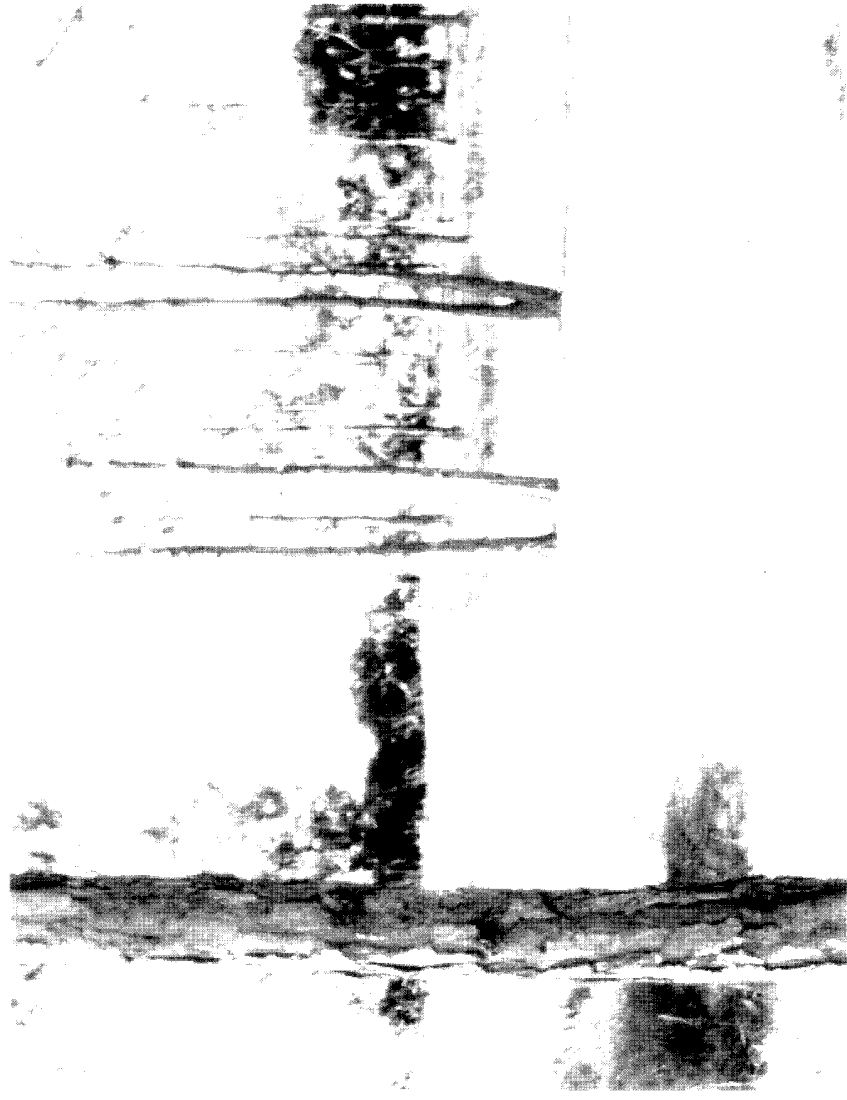
### ENVIRONMENT

REPORT INCLUDED.

PRESERVATION  
CONDITIONS.

RECOMMENDATIONS  
FOR DEVIATION 3 AND

+



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# DCI2005-00055 DIPLOMAT

## RPD/CPD

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### CONCLUSIONS

This request, as conditioned, is consistent with the Lee Plan and the Land Development Code. As conditioned (limited in density and with enhanced buffering), the request is compatible with the surrounding area (including residential mobile home neighborhoods), and will not adversely affect environmentally critical areas or natural resources. Approval of the request as conditioned will not place an undue burden upon the existing or planned transportation network. Urban services are available. The proposed mix of uses is appropriate, as conditioned.



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## COMMERCIAL USES ON US-41

### EAST SIDE (SOUTH OF DIPLOMAT)

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2.6 MILES - ARBY'S, KFC, TACO BELL, AND A CAR WASH

2.4 MILES - ABC LIQUOR

2.1 MILES - WENDY'S

1.9 MILES - B.P. (4 PUMPS) - HESS (6 PUMPS)

1.7 MILES - VINYL STORAGE BUSINESS COMING SOON, SEVERAL CAR WASHES

1.4 MILES - CITGO (2 PUMPS)

0.5 MILES - CVS WAL-MART (CAR WASH)

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## COMMERCIAL USES ON US 41

### EAST SIDE (NORTH OF DIPLOMAT)

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0.5 MILES    WALGREENS

0.6 MILES    A-1 SELF STORAGE

1.0 MILE    SHELL FACTORY

2.5 MILES    PUBlix (LIQUOR STORE IN PLAZA)

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## COMMERCIAL USES ON US-41

### WEST SIDE (NORTH OF DIPLOMAT)

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1.6 MILES CIRCULAR CAMPS

2.2 MILES HESS (8 PUMPS)

2 MILES BOAT SALES

1.5 MILES RV SALES

0.3 MILES 7-11 (8 PUMPS) AND A BP (2 PUMPS)

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COMMERCIAL USES ON US 41

WEST SIDE (SOUTH OF DIPLOMAT)

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NEXT DOOR - MERCHANT'S CROSSING

0.5 MILES - MOBIL (10 PUMPS)

1 MILE - SUNOCO (4 PUMPS)

1.5 MILES - DUNKIN DONUTS, LONG JOHN SILVERS

1.6 MILES - CVS

1.9 MILES - McDONALDS, BURGER KING

2 MILES - WAGGIENS

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COMMERCIAL USES ON DIPLOMAT  
TOTAL: 3 MILES CITGO (12 PUMPS)  
& A CAR WASH

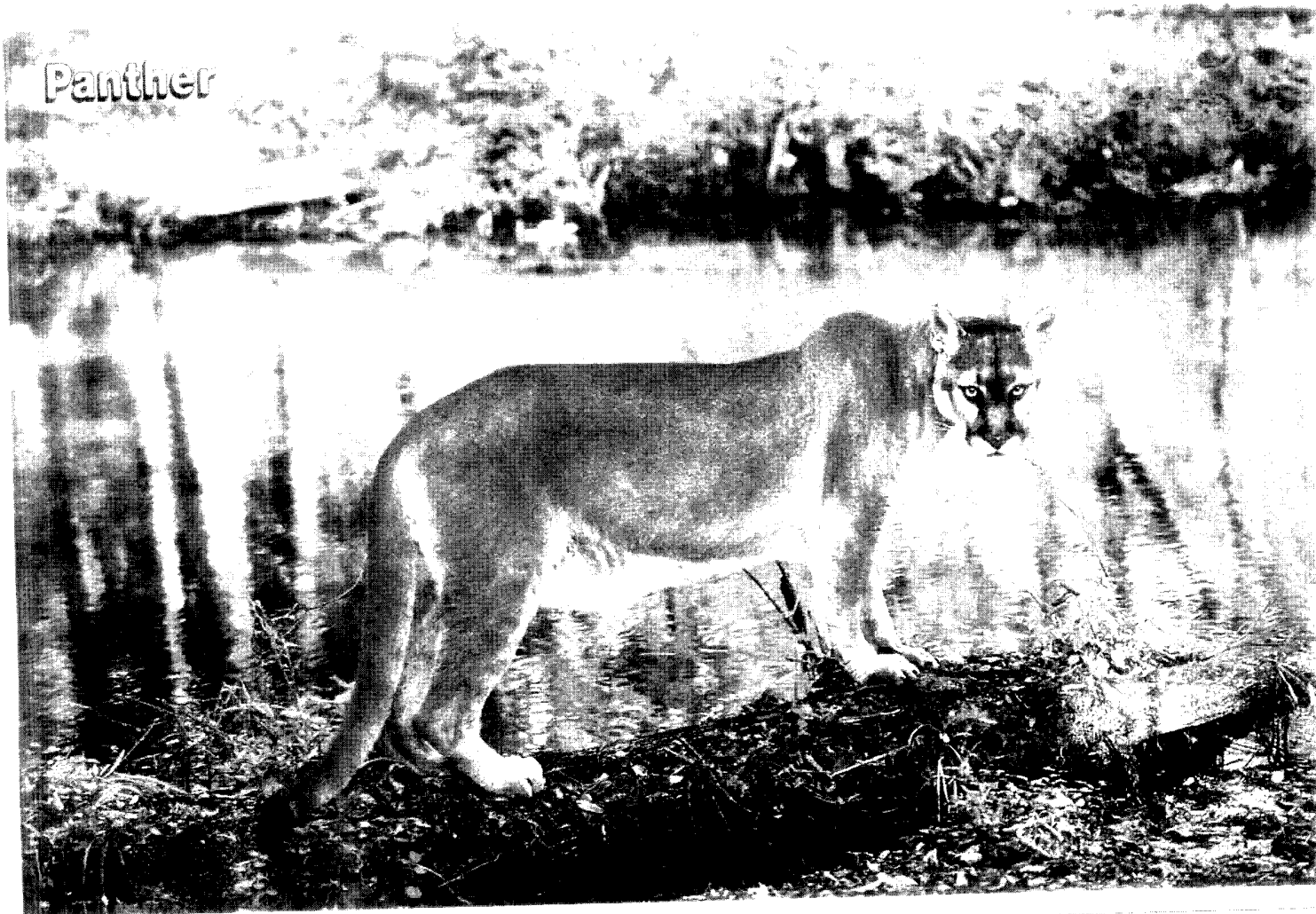
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**TOTAL FOR US 41:**

9 GAS STATIONS WITH CONVENIENCE  
STORES (47 PUMPS); 2 CAR WASHES;  
1 STAND-ALONE PACKAGE STORE;  
8 STAND-ALONE FAST FOOD;  
4 STAND-ALONE DRUG STORES;  
2 MINI STORAGE;  
5+ VEHICLE SALES LOTS



## Panther



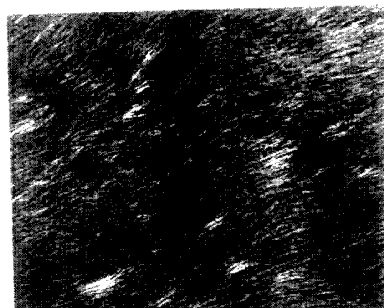
Since 1981, Florida's panthers have been tracked using collars with radio transmitters. Panthers are tracked and tracked by specially trained birds sensitive to the ultrasonic whistles from a dog gun, and few carry a radio and harness or collar with a radio or blanket as they tell me in the voice of the panthers are given a thorough examination, radio collared, and then released when they are in a state of almost disease, as they are.

Nearly all the known panthers in the Florida wilds have been caught and collared in this manner. They are tracked several times a year, and then located and plotted on maps. In this manner, much has been learned about their behavior.

In a 1980 period, 175 panthers, 11 of 20 known Florida panther deaths were caused by car, primarily in Alligator River and State Route 29. Five panthers were also shot in that same period. 180 panthers, 11 of 20, indicate that the use of panthers is a good way to protect other animals and have come into conflict

## PHYSICAL CHARACTERISTICS

The Florida panther has been characterized by a crook in its tail, a whorl or cowlick of hair in the middle of its back, and white flecks in its neck. However, the crook and the cowlick have been linked to *lynx baileyi* rather than characters that identify a distinct subspecies, and most, but not all, cougars in Florida have these traits. The white flecks are probably caused by skin mutations resulting from tick bites, as ticks are extremely abundant in the areas inhabited by panthers. The main physical characteristic which actually distinguishes the Florida panther from other subspecies of cougar is the shape of the skull. Also, the body hair of the Florida panther is relatively short and its legs relatively long compared to other populations.



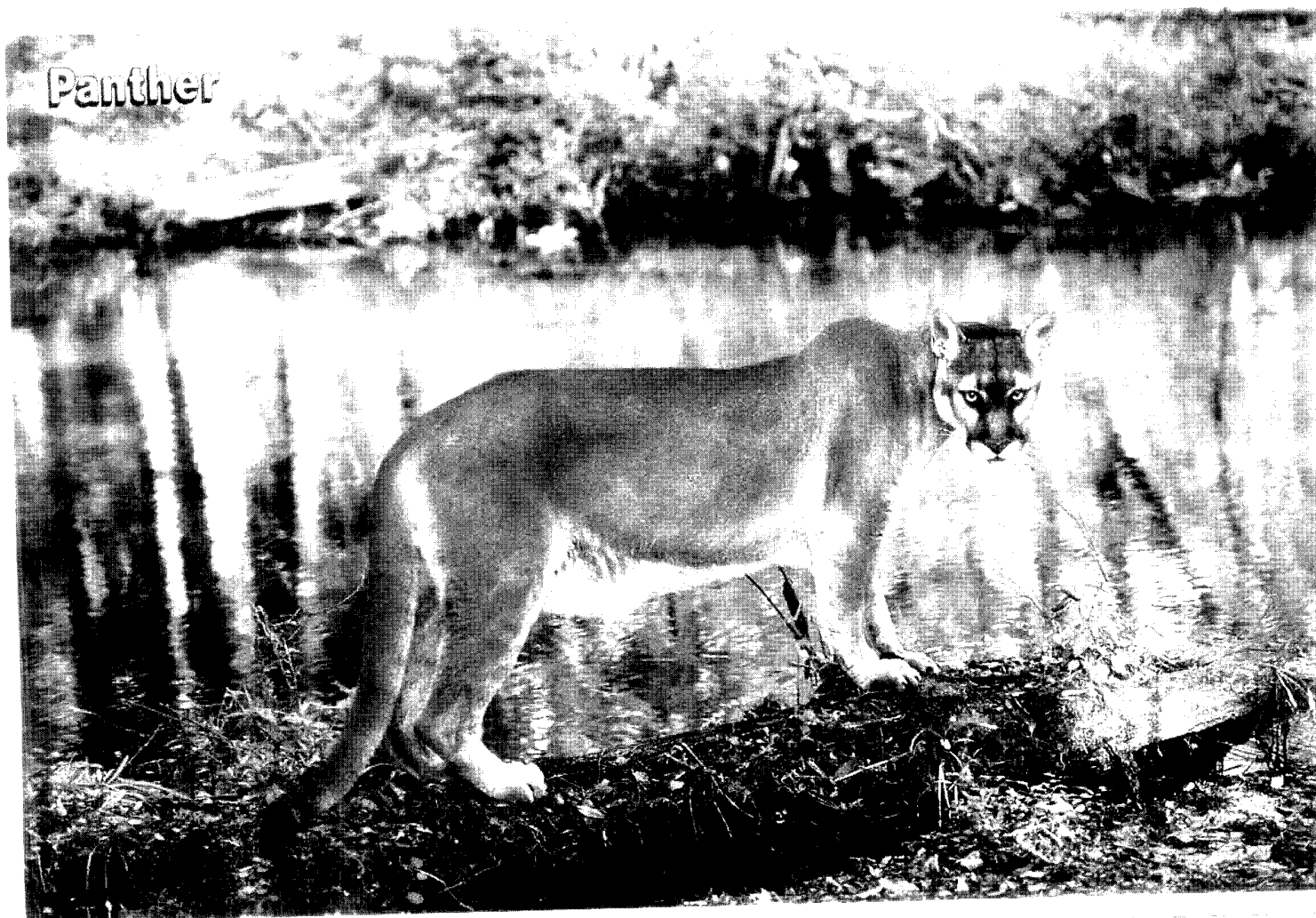
STAFF'S EXHIBIT # 3  
*U. S. F. W. S. / 1981*

This photo  
 the skulls of a  
 era cougar  
 Florida panther





## Panther



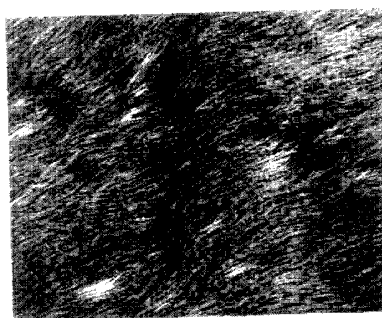
Since 1981, Florida panthers have been tracked using collars with radio transmitters. Panthers are tracked and treated by specially trained biologists using a variety of techniques: dart gun, and lewis, with a rope and harness, or caught with a live-trap. Panthers are given a thorough examination, including blood and fecal analysis, and then released. They are vaccinated against diseases.

Nearly all the known panthers in the Florida wild have been tagged and collared in this manner. They are tracked several times a week, and their locations are plotted on maps. In this manner, there has been a real change in the panther's life.

In a 1978-1979 study, 122 animals in the Panther's range were collared, and primarily in Alligator Bay and State Road 90. In 1980, panthers were collared in the Seminole National Forest. In 1981, panthers were collared in the Panther's range, and have been in conflict with the local deer herd over this issue, although

## PHYSICAL CHARACTERISTICS

The Florida panther has been characterized by a cross in its tail, a wheel or cockle of hair in the middle of its back, and white flecks on its neck. However, the cross and the cockle have been linked to subspecies rather than characters that identify a distinct subspecies, and most, but not all, panthers in Florida have these traits. The white flecks are probably caused by skin irritations resulting from tick bites, as ticks are extremely abundant in the areas inhabited by panthers. The main physical characteristic which actually distinguishes the Florida panther from other subspecies of cougar is the shape of the skull. Also, the body hair of the Florida panther is relatively short, and its legs relatively long compared to other populations.



This photo shows the skulls of a cougar and a Florida panther.



January 4, 2006

Diplomat Project

Meeting in Board Room attended by Ivan Ivosic, Bob Connor, Jr., Marc Wood and Jim Toth started at 2:00 p.m. and ended at 3:00 p.m. The purpose was to review the captioned project to prepare questions from Six Lakes to be presented at hearing scheduled for January 12, 2006 at 1:30 p.m. in Hearing Examiner's Meeting Room, 1500 Monroe St., Fort Myers, FL 33901. Following is a listing by topic to be discussed by Six Lakes representative, Jim Toth, at this hearing:

A. Buffering –

1. What is width of buffer area, i.e., 15', 30', other?
2. From what point is buffer area measured, i.e. from our property line, from middle of DOT drainage ditch, from East bank of DOT drainage ditch, etc? In any case, relate start point to both drainage ditch and our property line.
3. Is it possible to construct a berm within the buffer area?
4. Describe what is meant by "canopy tree".
5. How much of existing undergrowth will remain in buffer area – we like privacy provided by current growth.

B. Traffic –

1. Has a study been made of forecast traffic flow patterns and densities? Can we get a copy? Our concern is primarily with traffic to west and north of our community.

C. Utilities –

1. Sanitary sewer system
  - a. Has it been determined that North Fort Myers Utilities is capable of handling increased demand placed by this development? Will they need to make improvements in other changes? If so, who pays for them?
  - b. How will our community-owned system (including the lift stations) be impacted by this development? Will we need to improve our lift

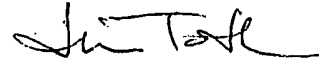
station capacity, for example, to meet increased pressure in force main portion?

2. Potable water system –

- a. Has it been determined that Lee County Utilities is capable of handling increased demand placed by this development? Will they need to make improvements or other changes? If so, who pays for them?
- b. Our system pressure is normally low – will this development further weaken our pressure? If so, consider possible impact on fire protection for our community.

D. Police, Fire and Emergency Medical Services –

1. Has it been determined that existing services <sup>CAN</sup> ~~and~~ handle demands placed by this development? Will any or all of them need to make any improvements or changes? If so, who pays for them?



**DEVIATION 6A.** Deviation from LDC Sec. 10-291(3) which requires (when practical) that residential developments of more than 5 acres in size provide 2 or more means of ingress into the development to allow the residential portion to the north of Diplomat Parkway to be constructed with a single ingress-egress connection onto Diplomat Parkway.

Staff recommends approval with conditions.

1. Access to the residential component North of Diplomat Parkway must be generally consistent with the approved Master Concept Plan.
2. The approved Master Concept Plan and local development order must depict a minimum 70-foot wide divided entrance on the north side of Diplomat Parkway that includes a median with two lanes on both sides of the median for ingress and egress.
3. Prior to issuance of a development order, the developer must provide written documentation from the North Fort Myers Fire District indicating that these access points are acceptable and provide adequate access for emergency vehicles.

**DEVIATION 6B.** Deviation from LDC Sec. 10-291(3) which requires (when practical) that residential developments of more than 5 acres in size provide 2 or more means of ingress into the development to allow the residential portion to the south of Diplomat Parkway to be constructed with a single ingress-egress connection onto Diplomat Parkway with an emergency access also onto Diplomat Parkway.

Staff recommends approval with conditions.

1. Access to the residential component South of Diplomat Parkway must be generally consistent with the approved Master Concept Plan.
2. Any emergency access gate must comply with all applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. Additionally, if an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner or the operator of the gate.
3. Prior to issuance of a development order, the developer must provide written documentation from the North Fort Myers Fire District indicating that these access points are acceptable and provide adequate access for emergency vehicles.

# **Why is Commercial Strip Development a Bad Thing?**

## **SPRAWL**

Blight - Strip commercial zones tend to have a blighting effect on surrounding residential areas.

Lack of Buffers - Strip commercial zones are often not adequately buffered from surrounding residential zones.

Proliferation of Strip Commercial - Due to their blighting effect and lack of adequate buffering, strip commercial zones tend to proliferate along roads.

Sprawl - The proliferation of strip commercial zoning often exacerbates sprawl development.

## **TRAFFIC**

Curb Cuts - The numerous curb cuts typical in strip commercial development create many turning movement opportunities that lead to the development of multi-lane parking lots masquerading as roads.

Lack of Access - When strip commercial zoning is deep, with frontage only on one road, the access is inadequate for the traffic being generated by the project and the single road can not accommodate the traffic, particularly the turning movements.

## **AESTHETICS**

Parking - The tendency to place all the parking between the buildings and the roadway leads to vast expanses of asphalt and a degraded visual environment.

Life Expectancy of Buildings - Commercial strip buildings typically do not age well. Consequently, over time, the buildings become eye sores.

Vacancies - Due to the limited life expectancy, strip commercial projects tend to become empty and derelict.

## **FUTURE LAND DEVELOPMENT**

Future Land Uses - There is a tendency to develop all the land along the highway as commercial and seal off the land to the rear from access or to limited access only through commercially developed areas.

## Rule 9J-5:

"Urban Sprawl" means urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions:

- (a) the premature or poorly planned conversion of rural land to other uses;
- (b) the creation of areas or urban development or uses which are not functionally related to land uses which predominate the adjacent area; or
- (c) the creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided.

Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development;

**ribbon or strip commercial or other development;**

or large expanses of predominantly low-intensity, low-density, or single-use development.

(FAC Rule 9J-5.003(140))

### **Lee Plan Defines:**

**URBAN SPRAWL** - The uncontrolled, premature, or untimely expansion and spreading out of urban levels of density or intensity into outlying non-urban areas.

## **GOAL 1: FUTURE LAND USE MAP.**

To maintain and enforce a Future Land Use Map showing the proposed distribution, location, and extent of future land uses by type, density, and intensity in order to protect natural and man-made resources, provide essential services in a cost-effective manner, and discourage urban sprawl.

**POLICY 6.1.7:** Prohibit commercial developments from locating in such a way as to open new areas to premature, scattered, or strip development; but permit commercial development to infill on small parcels in areas where existing commercial development would make a residential use clearly unreasonable.

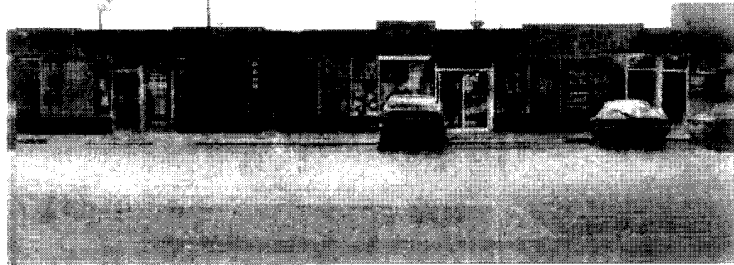
**POLICY 6.1.11:** Provide by 1995 appropriate requirements and incentives for the conversion of strip commercial development into series of discrete, concentrated commercial areas.

## Strip Malls in Florida.

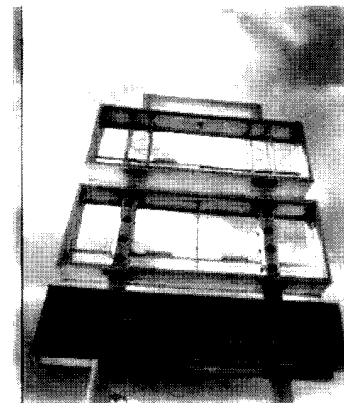
Copyright 1996, [www.AerialsInc.com](http://www.AerialsInc.com)



Typical Florida Strip Mall  
Kendall Drive & Southwest 147th Avenue



Florida Strip Mall: watercolor on paper.



Empty signs echo the empty storefronts at a strip mall at Nebraska and Fowler avenues in Tampa  
- St. Petersburg Times



## GOOGLE

Definitions of **strip mall** on the Web:

- A shopping center that usually has parking directly in front of the stores and does not have enclosed walk-ways linking the stores.  
[highered.mcgraw-hill.com/sites/0072553928/student\\_view0/chapter7/key\\_terms.html](http://highered.mcgraw-hill.com/sites/0072553928/student_view0/chapter7/key_terms.html)
- a mercantile establishment consisting of a row of various stores and business and restaurants along a road or busy street; usually opening on a parking lot  
[wordnet.princeton.edu/perl/webwn](http://wordnet.princeton.edu/perl/webwn)
- A shopping mall is a building or set of buildings that contain stores and have interconnecting walkways that make it easy for people to walk from store to store. The walkways may or may not be enclosed. In the United Kingdom and Australia these are called shopping centers or shopping arcades.  
[en.wikipedia.org/wiki/Strip\\_mall](http://en.wikipedia.org/wiki/Strip_mall)

**strip mall.** A shopping center consisting of a continuous line of one-story shops. (As defined by the travel industry)

## ANSWERS.COM

strip mall

*n.*

A shopping complex containing a row of various stores, businesses, and restaurants that usually open onto a common parking lot.

## THE FREE DICTIONARY

1. **strip mall** - NOUN - a mercantile establishment consisting of a row of various stores and business and restaurants along a road or busy street; usually opening on a parking lot

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

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

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

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

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

SECTION A. REQUEST

The applicant filed a request to:

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

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

SECTION B. CONDITIONS:

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

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

**COPY**

STAFF  
EXHIBIT # 8  
042005-0005

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

SECTION C. EXHIBITS:

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

Exhibit A: The legal description and STRAP number of the property.

Exhibit B: Zoning Map

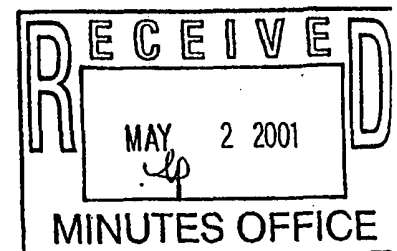
Exhibit C: Fourth Development Order Amendment for Merchant's Crossing DRI

SECTION D. FINDINGS AND CONCLUSIONS:

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

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

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

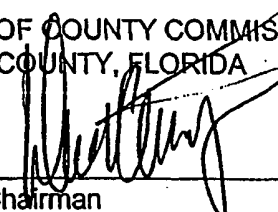


DULY PASSED AND ADOPTED this 30th day of April, 2001.


ATTEST:  
CHARLIE GREEN, CLERK

BY:   
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY:   
Chairman

Approved as to form by:

  
County Attorney's Office

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

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

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

34-43-24-03-0000A.0000	34-43-24-03-0000B.0000
34-43-24-03-0000C.0000	34-43-24-03-0000H.0000
34-43-24-03-000K0.0000	34-43-24-03-000L0.0000
34-43-24-03-000M0.0000	34-43-24-03-000N0.0000
34-43-24-03-000P0.0000	34-43-24-03-000Q0.0000
34-43-24-03-000R0.0000	34-43-24-03-00T00.0000
34-43-24-03-0000G.0000	34-43-24-03-00S00.0000
34-43-24-03-00000.0000	34-43-24-03-0000I.0000

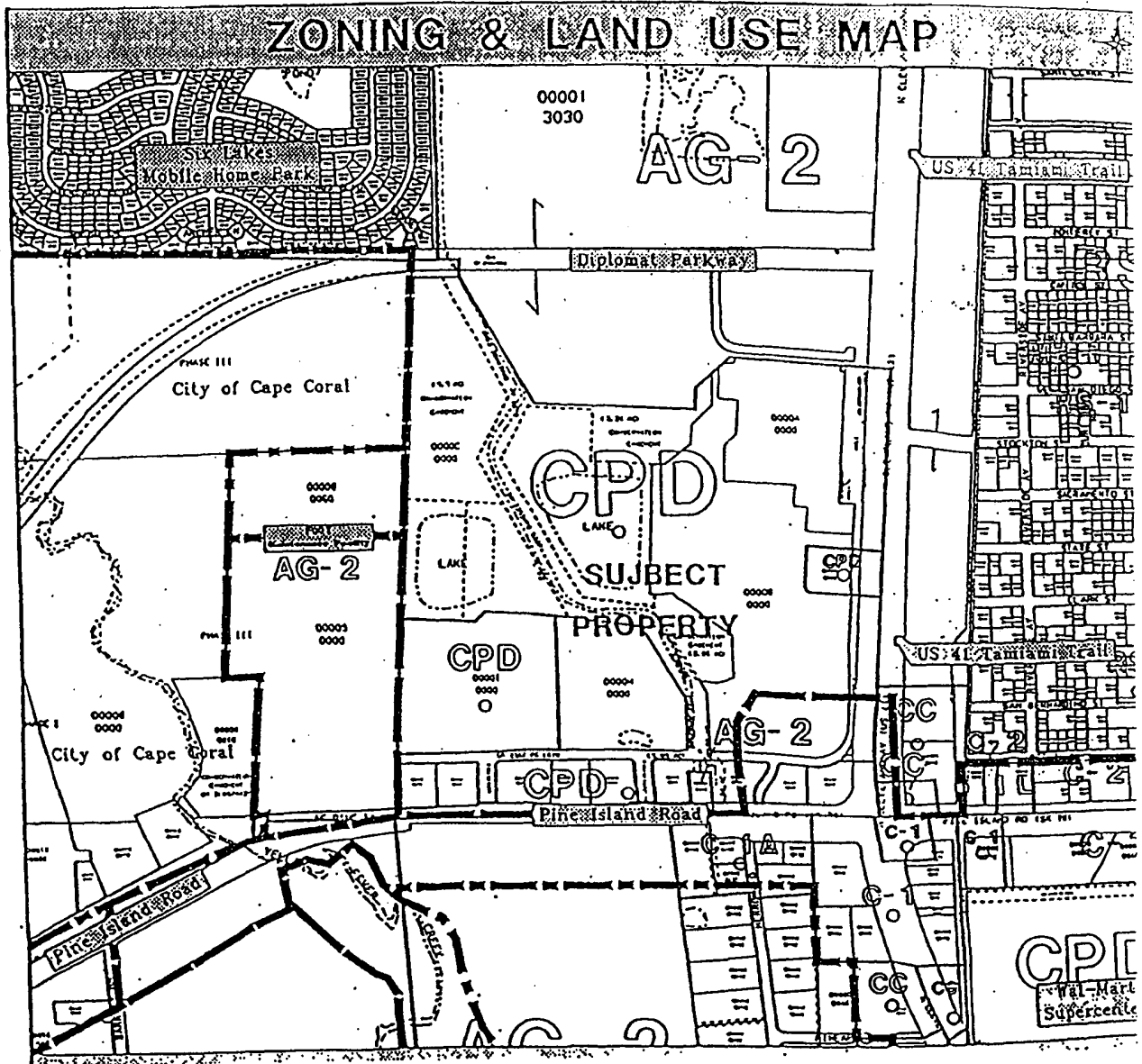


Exhibit B

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Board finds and determines the following:

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

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

B. The legal description of the project is as follows:

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

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

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

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

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



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

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

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

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

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

## **II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL**

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

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

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

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

A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

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

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

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

## **B. ENERGY**

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

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

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

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

#### C. POTABLE WATER/WATER SUPPLY

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

faucets, and other water conserving devices.

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

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

#### D. FIRE PROTECTION

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

#### E. REGIONAL SHOPPING CENTER

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

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



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

#### F. VEGETATION/WILDLIFE/WETLANDS

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

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

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

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

G. TRANSPORTATION

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

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

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

US 41 at:

Pondella Rd.

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

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

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

Del Prado Blvd.  
SR 78 to Viscaya Pkwy.

US 41  
Hancock Bridge Pkwy. to Business 41

Business 41 from  
SR 78 to Littleton Rd.

Pondella Rd.  
US 41 to Orange Grove Blvd.

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

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

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

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

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

a. The developer shall make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account shall accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) shall be used for the widening of SR 78. The use of funds and terms of the escrow shall be governed by a separate escrow agreement between the parties, and is subject to approval by the County Attorney's office, which approval shall not be unreasonably withheld. *This requirement has been satisfied.*

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

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

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

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

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

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

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

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

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

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

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

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

#### **H. SOLID WASTE**

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

#### **I. WASTEWATER MANAGEMENT**

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

#### **J. CONCURRENCY**

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

#### **K. GENERAL CONSIDERATIONS**



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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:  
CHARLIE GREEN, CLERK

By: *Lisa S. Pierce*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

By: *[Signature]*  
Chairman

APPROVED AS TO FORM

*[Signature]*  
County Attorney's Office

State of Florida  
County of Lee

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

Given under my hand and official seal at Fort Myers, Florida, this 30th day of May, A.D. 2001

CHARLIE GREEN, CLERK  
By: *Lisa S. Pierce*  
Deputy Clerk

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

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

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

Note 1. sf = Square Feet

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

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

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

## **EXHIBIT B**

### **INFORMATION TO BE INCLUDED IN ANNUAL MONITORING REPORT**

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



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

ORDER FOR CONTINUANCE

ZONING: CASE 90-4-17-DRI-1  
APPLICANT NAME: MERCHANTS CROSSING OF NORTH FORT MYERS, INC.  
NEW HEARING DATES: JUNE 27, 1990  
JUNE 29, 1990

The hearing on the above-styled case began as scheduled on June 1, 1990. At the conclusion of the presentations of the Staff and the Applicant and following the comments and presentations of the public and other interested parties present, the matter was continued to the date and time set forth below in order to allow the Hearing Examiner time to evaluate the material presented and to allow the parties and the public to prepare additional information which is responsive to questions, issues and concerns which arose during the course of the proceedings. There was no objection to this continuance by any party or member of the public.

Accordingly, this matter is continued to WEDNESDAY, JUNE 27, 1990 at 9:00 A.M., at the Hearing Examiner's Hearing Room, 2115 Main Street, Fort Myers, Florida.

In the event the hearing on June 27, 1990 does not conclude this matter, a second hearing time and date has been reserved for its conclusion. The time and date for the second day of this continuance is FRIDAY, JUNE 29, 1990 at 10:00 A.M., at the Hearing Examiner's Hearing Room, 2115 Main Street, Fort Myers, Florida.

Copies of this order will be mailed to the Staff, the Applicant, the Court Reporter, and all Parties of Record.



RICHARD SCOTT BARKER  
LEE COUNTY HEARING EXAMINER  
2115 Main Street  
Post Office Box 398  
Fort Myers, Florida 33902-0398  
Telephone: 813/335-2241

90 JUN 4 - 4 PM 6:15

RECEIVED  
ZONING

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

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

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

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

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

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

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

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

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

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

LESS

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

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

continued....

ALSO LESS

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

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

Containing 105 acres, more or less.

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

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

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

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

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

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

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

This approval is subject to the following conditions:

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

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

Hotel Office Campus

Uses shall be as limited below:

Hotel

Hotel/Motel

Convention - not to exceed 150 units

As further limited by Section 528:

Rental & Leasing Establishments, Group I

Specialty Retail Shops, Groups I & II

Personal Services, Group I

Consumption-on-Premises, one

Cocktail Bar or Lounge, one

Essential Services (df)

Essential Service Facility, Group I only

Excavation, Water retention

Leasing Office, temporary

(One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)

Signs, in compliance with the Zoning Ordinance, except as permitted by Deviation (9) approval

The combined hotel uses shall be limited to 69,000 square feet.

Office

Administrative Offices

Banks & Financial Establishments, Group I & II only

Business Services, Group I only (all groups requested)

Drive Thru, accessory to permitted use

Essential Services (df)

Essential Service Facility, Group I only

Excavation, water retention

Offices, Medical (df)

These following uses shall be the only subordinate use permitted by Section 528.C if the requirements of that section can be met:

Government services

Pharmacy & Personal Services, Group I

Restaurant, Group II only

Insurance Companies

Leasing Office, temporary

(One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)

Schools, Commercial

Signs (in compliance with the Zoning Ordinance)

Social Services, Group I only

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

Retail and Entertainment Center

Administrative Offices

Auto Parts Store (as limited by definition)

Banks and Financial Institutions, Groups I and II

Boat Parts Store (as limited by definition)

Building Material, Sales (as limited by Section 527 and no open or outdoor storage)

Clothing Stores, General

\* Cocktail Bar or Lounge, one

Consumption-on-Premises, one

Up to 3 may be approved by the director; pending review (pursuant to Zoning ordinance Section 202.03) on a case-by-case basis

Department Store

Essential Service facilities

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

#### Perimeter Parcels

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

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

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

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

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

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



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

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

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

The developer shall provide a copy of any agreements and letters from Lee Transit, to Lee County Development Review to show such compliance prior to (local) preliminary development order approval.
17. The notes on maps M.1 and M.2 shall be removed prior to final plan approval. The height and use restrictions contained in the Zoning resolution and DRI Development Order shall be incorporated onto the M.1 and M.2 maps prior to final plan approval.
18. Action on the deviations shall be as follows:

Deviation (1) is APPROVED subject to Condition 7.

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

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

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

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

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

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

Deviation (8) is WITHDRAWN.

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

Deviation (10) is APPROVED.

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

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

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

Deviation (12) is APPROVED.

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

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

Deviations (15) and (16) are WITHDRAWN.

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

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

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

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

Deviation (21) is DENIED.

Deviations (22) and (23) are WITHDRAWN.

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

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

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

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

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

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

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

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

ATTEST:  
CHARLIE GREEN, CLERK  
BY: Charlie Green  
Deputy Clerk  
**FILED**  
MAR 06 91  
CLERK CIRCUIT COURT  
BY: Charlie Green, D.C.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: [Signature]  
Chairman

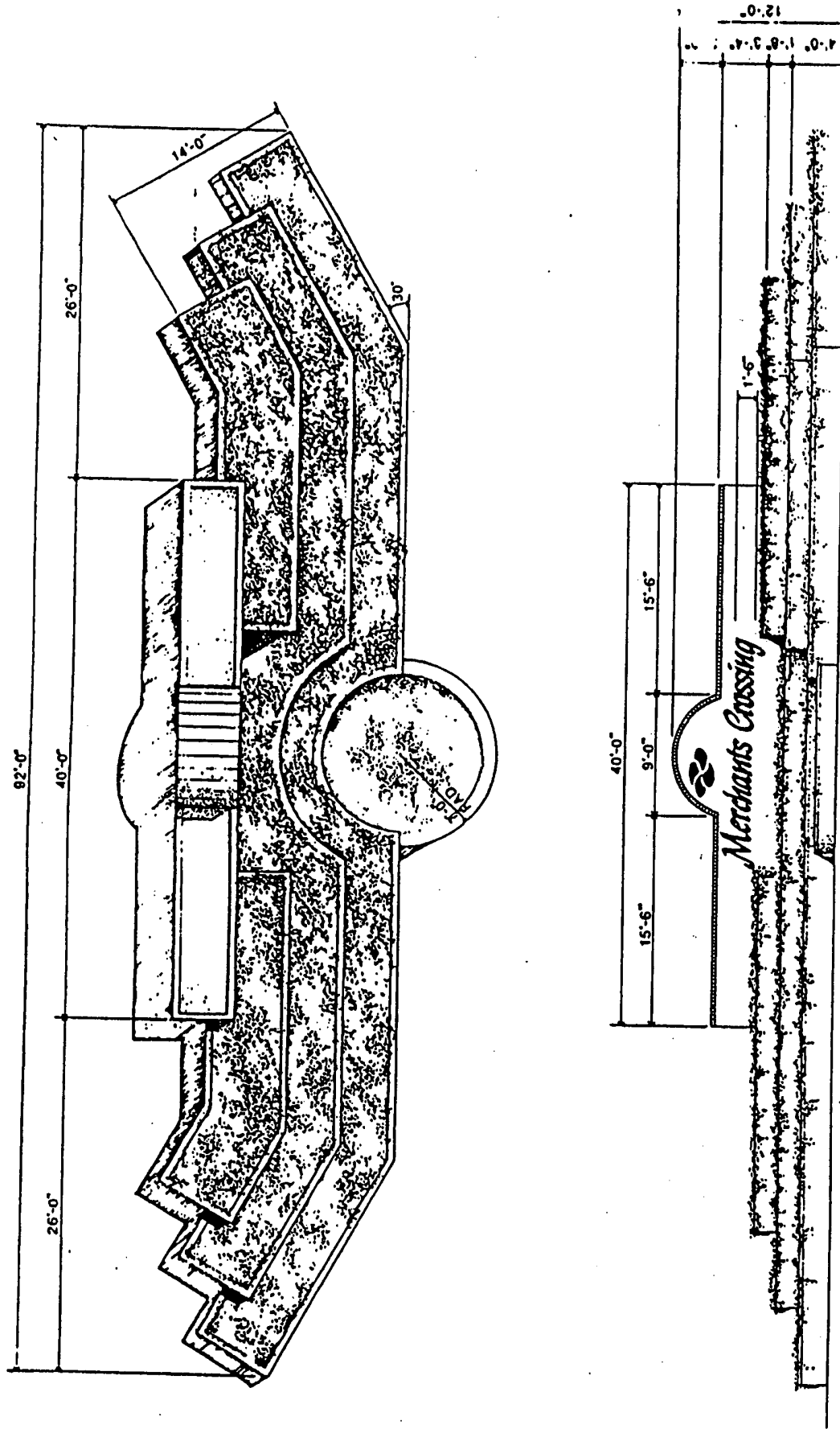
Approved as to form by:

Jack Mac'Kie  
County Attorney's Office

HEARING NUMBER 90-4-17-DRI-1

RESOLUTION NUMBER Z-90-034  
Page 12 of 12

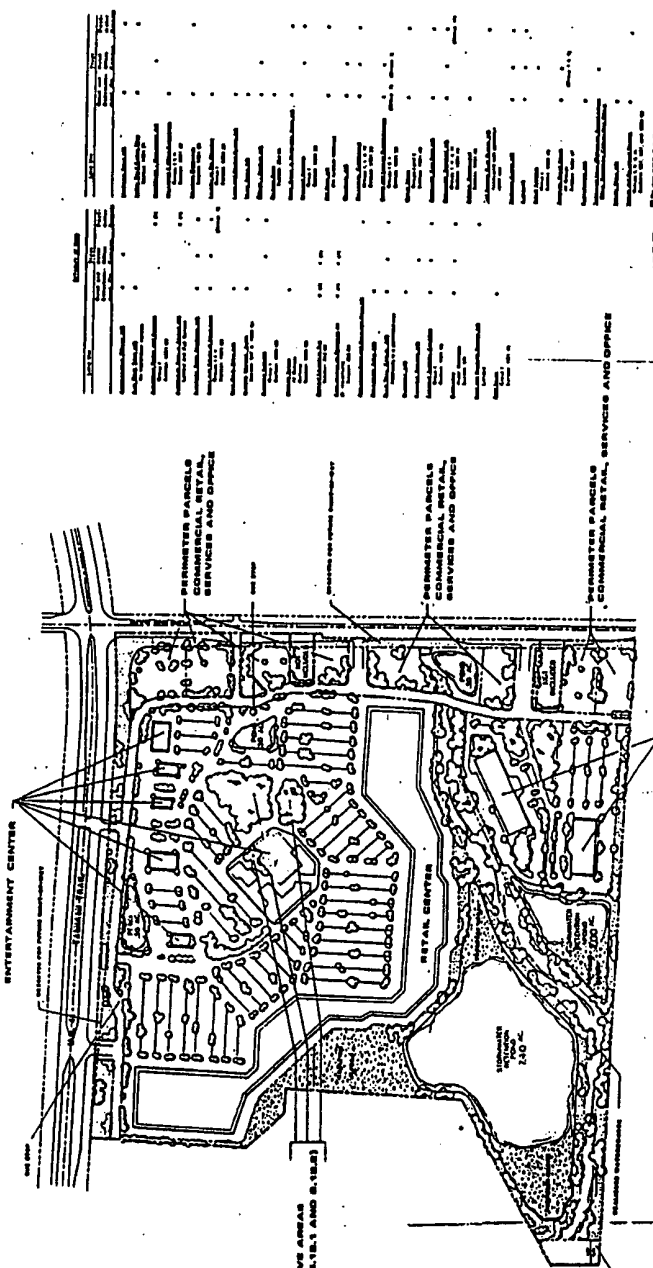
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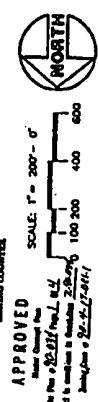
**Merchants Crossing**  
Signage System for North Ft. Myers

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

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



NO.	DESCRIPTION	AREA (SQ. FT.)	AREA (AC.)
1	ENTERTAINMENT CENTER	100,000	2.30
2	RETAIL CENTER	200,000	4.60
3	PERMISTER PARCELS COMMERCIAL RETAIL SERVICES AND OFFICE	150,000	3.45
4	HOTEL/LOBBY CAMPUS	120,000	2.77
5	PARKING LOT A	180,000	4.13
6	PARKING LOT B	160,000	3.67
7	PARKING LOT C	140,000	3.21
8	PARKING LOT D	120,000	2.77
9	PARKING LOT E	100,000	2.30
10	PARKING LOT F	80,000	1.84
11	PARKING LOT G	60,000	1.38
12	PARKING LOT H	40,000	0.92
13	PARKING LOT I	20,000	0.46
14	PARKING LOT J	10,000	0.23
15	PARKING LOT K	5,000	0.11
16	PARKING LOT L	2,500	0.06
17	PARKING LOT M	1,250	0.03
18	PARKING LOT N	625	0.01
19	PARKING LOT O	312	0.01
20	PARKING LOT P	156	0.00
21	PARKING LOT Q	78	0.00
22	PARKING LOT R	39	0.00
23	PARKING LOT S	19	0.00
24	PARKING LOT T	9	0.00
25	PARKING LOT U	4	0.00
26	PARKING LOT V	2	0.00
27	PARKING LOT W	1	0.00
28	PARKING LOT X	0.5	0.00
29	PARKING LOT Y	0.25	0.00
30	PARKING LOT Z	0.125	0.00



**APPROVED**  
 PLANNING COMMISSION  
 MAY 11, 2000

**APPLICANT**  
 MERCHANTS CROSSING  
 OF LEE COUNTY, INC.

# Merchants Crossing

A COMMERCIAL PLANNED DEVELOPMENT  
 APPLICATION FOR PUBLIC HEARING

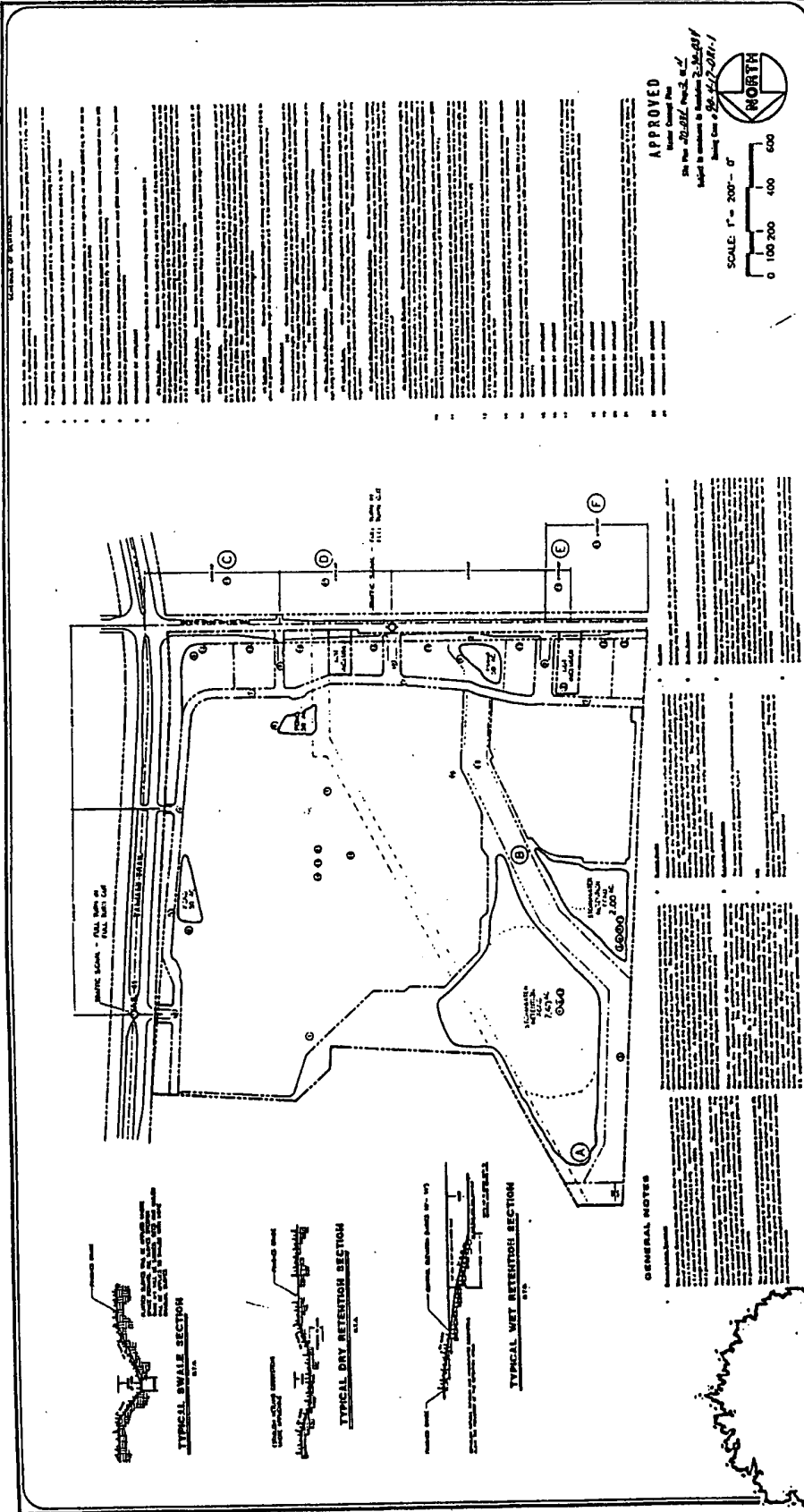
**PREPARED BY:**  
 JAMES M. JAMES & ASSOCIATES, INC.  
 1175 S. GARDNER ST. SUITE 200  
 TAMPA, FL 33606  
 (813) 281-1100

**DATE:** MAY 11, 2000

**PROJECT NO.:** 2000-001

**MAP-M.1**

**MASTER CONCEPT PLAN**



**APPROVED**

DAVID M. JONES, JR., P.E.

DAVID M. JONES & ASSOCIATES, INC.

1111 N. W. 11th St., Suite 100

Miami, FL 33136

DATE: 06/17/01

PROJECT NO.: 01-01-01

**MAP-M.2**

**MASTER CONCEPT PLAN**

**APPLICANT**

**Merchants Crossing**

**OF LEE COUNTY, INC.**

**DAVID M. JONES, JR., P.E.**

**DAVID M. JONES & ASSOCIATES, INC.**

**1111 N. W. 11th St., Suite 100**

**Miami, FL 33136**

**DATE: 06/17/01**

**PROJECT NO.: 01-01-01**

**GENERAL NOTES**

1. THE PLAN IS A MASTER CONCEPT PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.

2. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

3. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

4. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

5. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

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9. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

10. THE PLAN IS SUBJECT TO THE APPROVAL OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS.

**DAVID M. JONES, JR., P.E.**

**DAVID M. JONES & ASSOCIATES, INC.**

**1111 N. W. 11th St., Suite 100**

**Miami, FL 33136**

**DATE: 06/17/01**

**PROJECT NO.: 01-01-01**



03A 000 017

**Answers 1-10**

[illegible]

1. The first step is to identify the problem.
 2. The second step is to analyze the problem.
 3. The third step is to develop a solution.
 4. The fourth step is to implement the solution.
 5. The fifth step is to evaluate the solution.

Project  
MERCHANTS CROSSING  
NORTH 17 MYERS, FLORIDA  
Developer  
MERCHANTS CROSSING OF N  
ATLANTA GEORGIA.

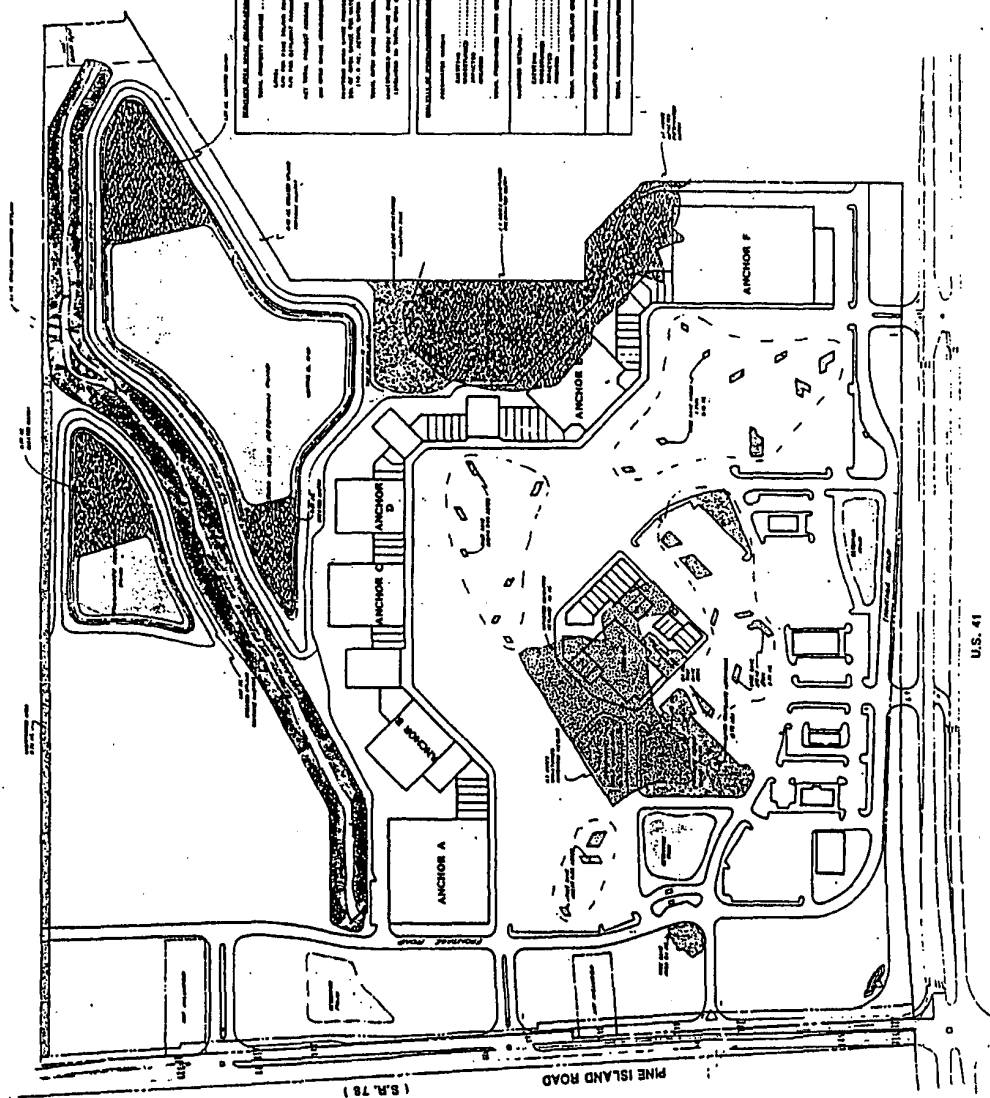
OF NORTH FORT MYERS

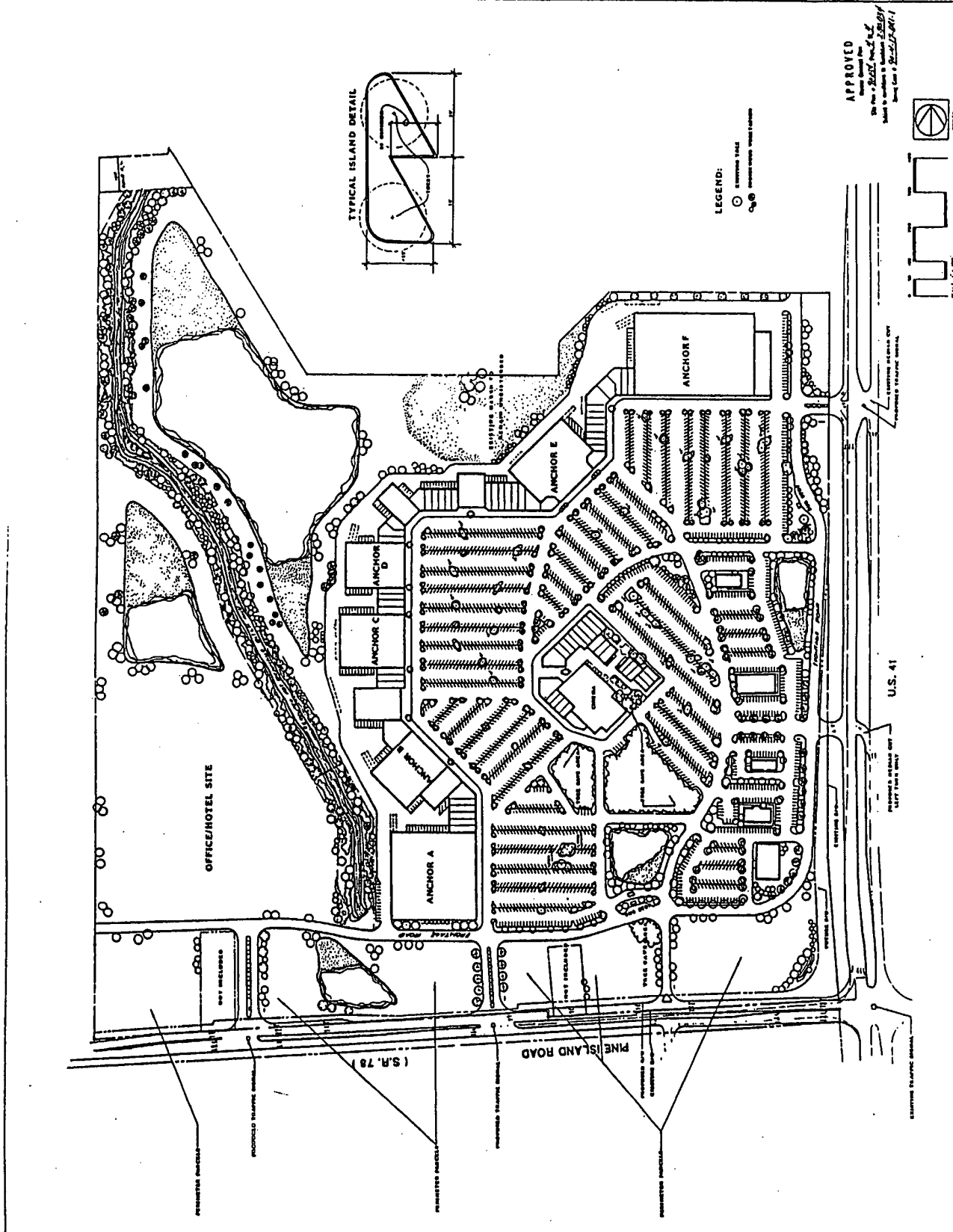
## BRAVIS

**APPROVED**

1. **Business Development**  
 2. **Marketing**  
 3. **Sales**  
 4. **Customer Service**  
 5. **Product Development**  
 6. **Finance**  
 7. **Human Resources**  
 8. **Operations**  
 9. **Legal**  
 10. **IT**  
 11. **Public Relations**  
 12. **Compliance**  
 13. **Quality Control**  
 14. **Supply Chain Management**  
 15. **Research & Development**  
 16. **Manufacturing**  
 17. **Logistics**  
 18. **Procurement**  
 19. **Facilities Management**  
 20. **Environmental Health & Safety**  
 21. **Information Security**  
 22. **Business Continuity Planning**  
 23. **Corporate Governance**  
 24. **Strategic Planning**  
 25. **Investor Relations**  
 26. **Government Affairs**  
 27. **Community Relations**  
 28. **Employee Relations**  
 29. **Training & Development**  
 30. **Compensation & Benefits**  
 31. **Performance Management**  
 32. **Organizational Design**  
 33. **Change Management**  
 34. **Project Management**  
 35. **Portfolio Management**  
 36. **Risk Management**  
 37. **Insurance**  
 38. **Tax**  
 39. **Accounting**  
 40. **Internal Audit**  
 41. **External Audit**  
 42. **Regulatory Affairs**  
 43. **Standards & Compliance**  
 44. **Intellectual Property**  
 45. **Patents**  
 46. **Trademarks**  
 47. **Copyrights**  
 48. **Trade Secrets**  
 49. **Non-Compete Clauses**  
 50. **Confidentiality Agreements**  
 51. **Partnership Agreements**  
 52. **Joint Ventures**  
 53. **Acquisitions**  
 54. **Mergers**  
 55. **Divestitures**  
 56. **Spin-offs**  
 57. **Reorganizations**  
 58. **Restructurings**  
 59. **Bankruptcy**  
 60. **Insolvency**  
 61. **Debt Restructuring**  
 62. **Equity Restructuring**  
 63. **Capital Markets**  
 64. **Securities**  
 65. **Investments**  
 66. **Private Equity**  
 67. **Venture Capital**  
 68. **Angel Investors**  
 69. **Public Markets**  
 70. **Initial Public Offerings**  
 71. **Secondary Offerings**  
 72. **Convertible Securities**  
 73. **Warrants**  
 74. **Options**  
 75. **Restricted Stock**  
 76. **Employee Stock Purchase Plans**  
 77. **Executive Incentive Plans**  
 78. **Non-Executive Director Compensation**  
 79. **Director Election**  
 80. **Shareholder Proposals**  
 81. **Proxy Voting**  
 82. **Shareholder Activism**  
 83. **ESG (Environmental, Social, Governance)**  
 84. **Carbon Footprint**  
 85. **Greenhouse Gas Emissions**  
 86. **Water Usage**  
 87. **Waste Management**  
 88. **Human Rights**  
 89. **Labor Practices**  
 90. **Supplier Ethics**  
 91. **Product Safety**  
 92. **Consumer Protection**  
 93. **Product Liability**  
 94. **Recalls**  
 95. **Product Defects**  
 96. **Product Complaints**  
 97. **Product Returns**  
 98. **Product Disputes**  
 99. **Product Litigation**  
 100. **Product Recall**

U.S. 11

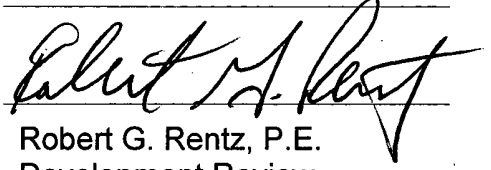




MEMORANDUM  
FROM THE  
DEPARTMENT OF  
COMMUNITY DEVELOPMENT  
DEVELOPMENT SERVICES DIVISION

DATE: January 6, 2006

To: Tony Palermo  
Senior Planner

FROM:   
Robert G. Rentz, P.E.  
Development Review  
Engineer

RE: Diplomat Property RPD/CPD  
Case No. DCI2005-00055

The proposed project is located at the intersection of U.S.41 and Diplomat Pkwy. Based on the ITE Trip Generation Report 7<sup>th</sup> Edition the project will generate 785 net new external trips in the peak hour. The anticipated build out year is 2009.

Based on traffic counts taken by the City of Cape Coral, a 4% growth rate, and the Lee County Generalized Peak Hour Directional Service Volumes for Urbanized Areas, in year 2010 Diplomat Pkwy. will operate at level of service "B", with or without the project traffic. Based on 2005 estimated volumes from the 2004/2005-2005/2006 Concurrency Management Report, a growth rate derived from the 2004 Traffic Count Report, and the Generalized Service Volumes, in year 2010 U.S. 41 between Pine Island Rd. and Littleton Rd. will operate at level of service "B", and will operate at level of service "C" with addition of the project traffic.

HEX

**MEMORANDUM**  
FROM THE  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**DIVISION OF ZONING**

LEE COUNTY  
HEARING EXAMINER  
06 FEB -2 AM 9:39

DATE: February 2, 2006

To: Lee County Hearing Examiner

FROM: Tony Palermo, Senior  
Planner, Zoning

RE: DCI2005-00055 DIPLOMAT RPD/CPD

Thank you for the opportunity to comment on the January 27, 2006 submittal by the applicant.

There are a few comments I'll make regarding the submission and staff's recommendations. Staff still has concerns about the four issues raised in the December 23, 2005 staff report: Commercial Strip Development, Commercial Uses, Enhanced Buffers and Density.

First, the applicant's new Master Concept Plan has some more detail to it, including directional arrows. There are not details such as building footprints or specific development areas, service areas, etc.

Second, staff recommends including Deviations 6A and 6B with the conditions provided by staff with minor changes. You will notice the notation, "Possible location of future exit connection through commercial parking aisles." The wording "Possible" implies this 2<sup>nd</sup> access is discretionary and not mandatory.

Staff agrees with the Hearing Examiner that a second means of access for the residential tracts to the north must somehow be provided. As such, under Deviation 6A, staff proposes the following additional wording:

Condition     The local development order must include the second access from the residential tract to commercial Parcel 3 as shown on the approved MCP.

The word "Possible" be eliminated from the notation.  
"Practical"

Third, proposed Condition 17 provides some positives for the development. First, each building is limited to 10,000 s/f. Second, each building is required to be architecturally consistent and compatible with the residential development. This is a subjective condition which may be difficult to enforce at the development order stage, but it is a positive idea nonetheless. The lower height (50 feet/3 stories to 35 feet/2 stories) adjacent to the

U:\200602\DCI20050.005\5\DILOMAT MEMO.WPD

STAFF'S EXHIBIT # 11  
~~DCI2005-00055~~  
Post Hrg. Submittal

residential Six Lakes Country Club is supported by staff also.

The "whichever is less" note at the end of Condition 17 does not make sense and should be eliminated. The building should be limited to both 2 stories and 35 feet, not whichever is less.

However, even with the inclusion of a Condition 17 or a similar condition, staff stands by its recommendation in the December 23, 2005 staff report. There would still be some 1,900 linear feet of parking, commercial buildings, and loading and service areas built in a manner contrary to Policy 6.1.7 of the Lee Plan. The MCP still does not have the detail, proposed elevations, enhanced buffering or other conditions to assure staff that strip development either does not occur or is encouraged to further proliferate.

Lastly, the revised Master Concept Plan and proposed Condition 17 received January 27, 2006 do not change Environmental Sciences' staff recommendations. Those recommended conditions are unchanged.

I am at 479-8325 if you have questions or concerns.

cc. Donna Marie Collins, County Attorney

Kim Trebatoski, Environmental Sciences

Neale Montgomery, For the Applicant

Jon Hagan, For the Applicant

Jim Toth  
Six Lakes Country Club  
203 Nicholas Blvd.  
North Fort Myers, FL 33903

Persides Zambrano  
City of Cape Coral  
Public Works and Transportation  
PO Box 150027  
Cape Coral, FI 33915-0027

<http://www.moneyglossary.com/?w=Strip+Development>

**MoneyGlossary.com**

[Home](#)

## **Strip Development**

**Definition:** Place where each store has direct access to the street.

# Banks Engineering

Professional Engineers, Planners & Land Surveyors  
FORT MYERS ♦ NAPLES ♦ SARASOTA  
PORT CHARLOTTE

RECEIVED  
JAN 27 2006

## LETTER OF TRANSMITTAL

DATE: January 27, 2006

DCI 2005-00055

TO: Tony Palermo  
Division of Zoning  
1500 Monroe Street  
Fort Myers, FL 33901

PHONE: \_\_\_\_\_  
FAX: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REFERENCE: DCI2005-00055 – Diplomat RPD/CPD JOB NO. 2028

COPIES	DESCRIPTION
13	11 x 17 Revised MCP
13	24 x 36 Revised MCP
13	Condition Regarding Commercial Parcel's 1, 2, and 3

### REASON:

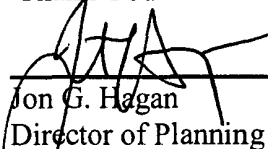
- ☐ Your Comments  
☐ Your Approval  
☐ Your Information  
☐ As Per Your Request  
☐ Your Review

### VIA:

- ☐ Fax: \_\_ Pages Total  
☐ Regular Mail  
☒ Courier  
☐ Overnight Express  
☐ Pick-up

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Thank You

  
Jon G. Hagan  
Director of Planning

APPLICANT'S EX. 6  
DCI2005-00055  
POST HRG. SUBMITTAL

LEE COUNTY  
HEARING EXAMINER  
06 JAN 30 AM 10:12

# **Banks Engineering**

Professional Engineers, Planners & Land Surveyors  
10511 Six Mile Cypress Parkway  
Fort Myers, Florida 33912  
(239) 939-5490  
Fax (239) 939-2523

**RECEIVED**  
JAN 27 2006

*Please Reply To:*  
FORT-MYERS OFFICE

## Condition 17:

Commercial Parcel's 1 and 2 and the western 2.3 acres of Commercial Parcel 3 are limited single free-standing buildings with a maximum square footage of 10,000 square feet for each building and will be architecturally consistent and compatible with the residential development. The buildings in Commercial Parcel's 1 and 2 and the western 2.3 acres of Commercial Parcel 3 will not exceed 2 stories or 35 feet, whichever is less.

**DCI 2005-00055**

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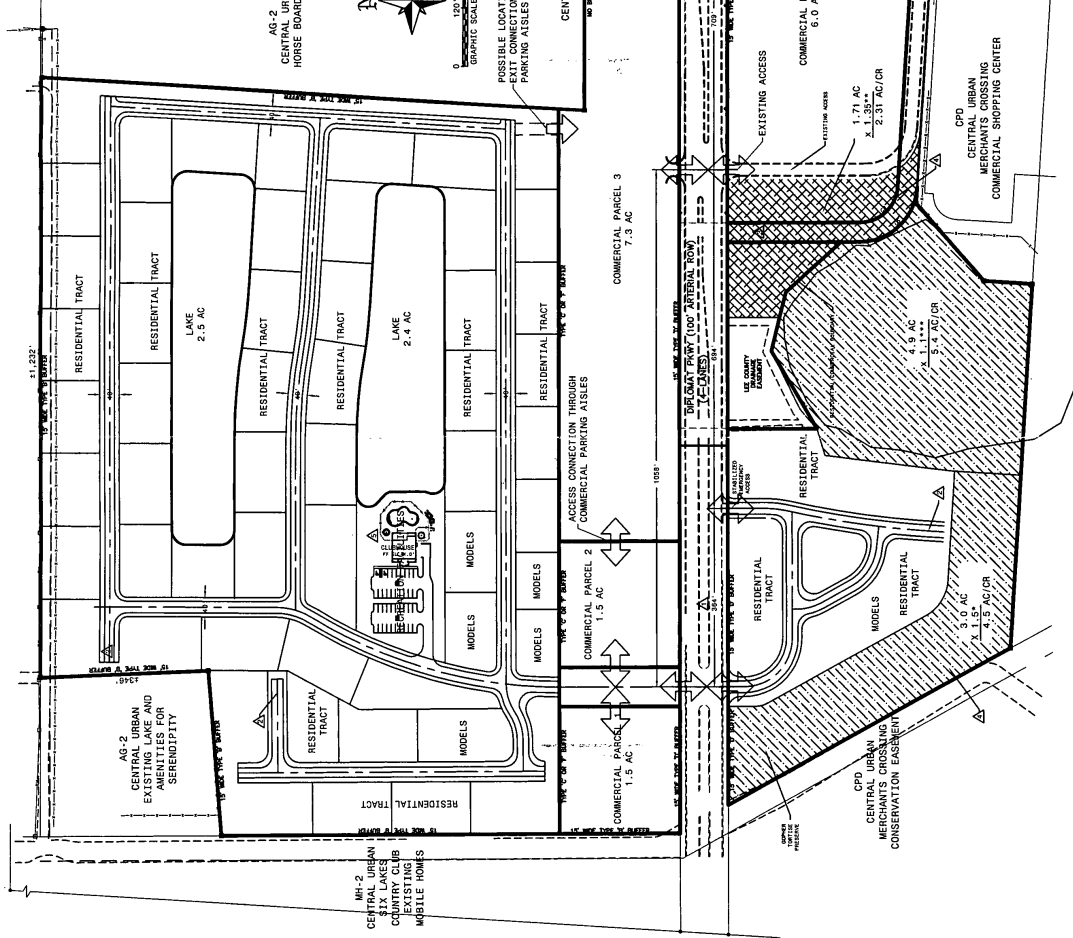
**Naples Office**  
6640 Willow Park Dr.  
Suite B  
Naples, Florida  
34109  
(239) 597-2061  
Fax (239) 597-3082

**Sarasota Office**  
1144 Tallevast Road  
Suite # 115  
Sarasota, Florida  
34243  
(941) 360-1618  
Fax (941) 360-6918

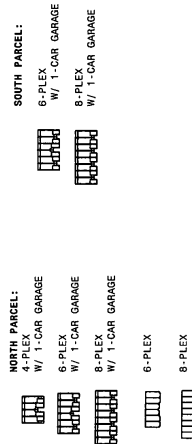
**Port Charlotte Office**  
12653 SW CR 769  
Suite B  
Lake Suzy, Florida  
34269  
(941) 625-1165  
Fax (941) 625-1149



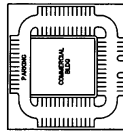
MI-2  
CENTRAL URBAN  
EXISTING MOBILE-HOME PARK



TYPICAL RESIDENTIAL BUILDINGS:



TYPICAL COMMERCIAL BUILDINGS:



OPEN SPACE CALCULATIONS (MAX FOR COMMERCIAL/AGE COMMON OPEN SPACE FOR RESIDENTIAL)	
TRACT	AREA
COMMERCIAL 1	1.47 AC
COMMERCIAL 2	1.49 AC
COMMERCIAL 3	7.23 AC
COMMERCIAL 4	6.0 AC
COMMERCIAL 5	1.71 AC
COMMERCIAL 6	2.31 AC
COMMERCIAL 7	4.9 AC
COMMERCIAL 8	3.0 AC
COMMERCIAL 9	1.5 AC
COMMERCIAL 10	1.5 AC
COMMERCIAL 11	1.5 AC
COMMERCIAL 12	1.5 AC
COMMERCIAL 13	1.5 AC
COMMERCIAL 14	1.5 AC
COMMERCIAL 15	1.5 AC
COMMERCIAL 16	1.5 AC
COMMERCIAL 17	1.5 AC
COMMERCIAL 18	1.5 AC
COMMERCIAL 19	1.5 AC
COMMERCIAL 20	1.5 AC
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COMMERCIAL 92	1.5 AC
COMMERCIAL 93	1.5 AC
COMMERCIAL 94	1.5 AC
COMMERCIAL 95	1.5 AC
COMMERCIAL 96	1.5 AC
COMMERCIAL 97	1.5 AC
COMMERCIAL 98	1.5 AC
COMMERCIAL 99	1.5 AC
COMMERCIAL 100	1.5 AC

AG-2  
CENTRAL URBAN  
HORSE BOARDING

TOTAL RESIDENTIAL: 468

DENSITY:  
468 UNITS/52.84 AC. = 8.9 UNITS/AC.

INDIGENOUS NOTES:  
TO INDIGENOUS OPEN SPACE AREA IS PROVIDED IN SOUTHERN PORTION OF ENCLAVEMENT (12.21 CREDITS TOTAL) AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS.  
INDIGENOUS OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT UNDER PERMITTING.

AG-2  
CENTRAL URBAN  
VACANT

RECEIVED  
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DCI 2005-00055

#UNITS:  
NORTH PARCEL: 418  
SOUTH PARCEL: 50  
TOTAL: 468

CONCEPTUAL SITE PLAN  
DIPLOMAT PARCEL  
LEE COUNTY, FLORIDA

N.B.D. DEVELOPMENT, INC.  
3017 VANDERBILT ROAD, SUITE 310  
BIRMINGHAM, AL 35226  
PH: (205) 964-8272  
FAX: (205) 964-8272

Banker Engineering, Inc.  
Professional Engineers, Planners & Land Surveyors  
1000 10TH AVENUE, SUITE 200  
BIRMINGHAM, AL 35203  
PH: (205) 964-8272  
FAX: (205) 964-8272

DATE	PROJECT	DRAWING	REVISION	SCALE	SHEET	OF
FEB 2005	2028	021705	01	1"=120'	1	1