

ZONING DIVISION  
LEE COUNTY  
DEVELOPMENT OF REGIONAL IMPACT SUFFICIENCY REVIEW  
TRANSMITTAL SHEET

TO: Distribution

John Fredyma, Asst County Attorney  
Susie Derheimer, Environmental Sciences  
Pam Houck, Zoning Director

FROM: Alvin Block, AICP

DATE: 05/27/2014

PROJECT NAME: RIVERS EDGE YACHT/COUNTRY CLUB  
INFORMATION SUMMARY:

CASE #: DRI2014-00001

**RESUBMITTAL**

☐ To update your file  
☒ Review and forward sufficiency  
questions or make finding of  
sufficiency

**RESPONSE REQUIRED BY: 06/17/2014**

Additional Comments:

(DRI) Lee County LDC Section 34-373(d)(1).  
Sufficiency and Completeness

No hearing will be scheduled for an application for a Planned Development until the application has been found sufficient. All applications for Planned Developments will be deemed sufficient unless a letter advising the applicant of any insufficiencies has been mailed within fifteen (15) working days of submittal of the application. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within fifteen (15) working days of the date of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in Section 34-373.

cc: DRI planner/working file  
DRI Zone File

Distributed by: Billie Jacoby

Date: 05/27/2014

# PAVESE LAW FIRM

STEVEN C. HARTSELL

Direct dial: (239) 336-6244  
Email: [stevehartsell@paveselaw.com](mailto:stevehartsell@paveselaw.com)

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Drawer 1507, Fort Myers, Florida 33902-1507 | (239) 334-2195 | Fax (239) 332-2243

May 23, 2014

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Alvin "Chip" Block, Senior Planner  
Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33901

via email: [blockah@leegov.com](mailto:blockah@leegov.com)

***RE: Palmas Del Sol Sufficiency Response***

Dear Chip,

I am writing in response to your letter dated March 6, 2014, regarding the sufficiency questions for the Rivers Edge NOPC.

***1. Please provide a legal description and sealed sketch (and boundary survey) of the entire planned development per LDC 34-373 (c).***

The requirement for a legal description and sealed sketch and a boundary survey were waived by the director. A copy of the waiver of submittal documents is attached.

***2. The ownership of the property is indicated as being Palmas Del Sol Condominium Association, Inc. Please provide sufficient documentation demonstrating this application was initiated in accordance with this section of the land development code.***

The subject property is a mangrove preserve in which the underlying fee is owned by a corporation. The association board has authorized the filing of the application as indicated by the signature of the President on the Authorization filed with the Application. No further documentation is required as agreed during our meeting with staff. (See LDC 34-201(a)(1)(a)3.)

***3. Please provide sufficient documentation demonstrating compliance with this LDC section since the property involved is part of the overall development of regional impact it will be necessary to also provide proof that all owners within the DRI have been notified of this application by the applicant in accordance with [LDC 34-201(a)(1)(b)2].***

This conservation easement was put in place by the developer of the Palmas Del Sol condominium. The property is owned by Palmas Del Sol Condominium Association, Inc., so amending the conservation easement does not require approval by the rest of the owners within the DRI. Also, as noted in our meeting, the County Attorney's Office has indicated in the past that the published advertised notice is sufficient to give others in the DRI an opportunity to participate in the hearing if they so choose.

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**4. Please provide the information required by LDC 34-201(a)(1)(b)3.**

Please see the opinion letter attached.

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**5. Staff is asking that the owner provide sufficient documentation demonstrating proof that all owners within the DRI have been notified by the applicant of this application.**

As noted in our meeting, the County Attorney's Office has indicated in the past that the published advertised notice of the DRI Amendment is sufficient to give all members of the public, including others in the DRI, an opportunity to participate in the hearing if they so choose. LDC §34-201(a)(1)c refers to subdivisions and this is not a subdivision. Furthermore, this conservation easement was put into place by the developer of the Palmas Del Sol condominium. The property is owned by Palmas Del Sol Condominium Association, Inc., not the Gulf Harbour Master Association, so amending the conservation easement does not require approval by any other property owners within the DRI.

**6. The applicant seeks to amend the conditions of the DRI development order. It will be necessary to supply the names and mailing addresses of all surrounding property owners. It appears the current submittal only includes owners within 500 feet of the Palmas Del Sol strap number.**

As noted in our meeting, the County Attorney's Office has indicated in the past that the published advertised notice is sufficient to give others in the DRI an opportunity to participate in the hearing if they so choose. Also, LDC 34-202(a)(6) provides that those names are required for those "...within 500 feet of the perimeter of the subject property or the portion therewith that is the subject of the request. ..." Only the 10.17 acre Conservation Easement property is affected or is the subject of the request. This Conservation Easement was imposed by the developer of the Palmas Del Sol condominiums, and not by the overall DRI developer. The condition of the DRI applies only as the result of the development of Palmas Del Sol condominium and not as mitigation for the overall DRI. For these reasons, the 10.17 acres over which the Conservation Easement was placed, is owned by Palmas Del Sol and not by the Gulf Harbour Master Association.

**7. Please advise if any property restrictions exist and will these affect the requested action, and how they may.**

The attached opinion letter referenced in #5 indicates that the attorney for the applicant has examined the appropriate documents and has determined that there are no conflicts with regard to those restrictions and the requested DRI amendment.

**8. (a) It appears that another action may be necessary to amend past Board of County Commissioners actions. Resolution Z-02-020 includes a condition (Condition 6B) that may need to be revised based on the information in the submittal. The submittal provides the required Notice of Proposed Change application. (b) As required by section 5 of the application, please provide a draft amended DRI development order (DO) using strike-through and underlining to show the changes proposed in Section 13 of this NOPC application. Please note according to our records the Amended DRI DO would represent the Seventh Amendment.**

DRI 2014-00001

(a) The condition does not need to be amended. Resolution Z-02-020 Condition 6(b) required that a Conservation Easement be recorded in favor of Lee County and FDEP. Condition 6(b) was met. The conservation easement was recorded. FDEP has subsequently released any right it has to the conservation easement because FDEP did not require the easement; it was only a local Lee County



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condition.

(b) Please see the attached draft SEVENTH AMENDED DRI Development Order.

***9. Please review the PUD zoning approval and ensure that there is not a need to amend the PUD due to a similar condition of approval related to the minimum height of the mangrove trimming. It also appears necessary for the applicant to amend resolution Z-02-020, Condition 6(b).***

There is no similar requirement within the PUD zoning with regard to the height of trimming mangroves. Similarly, as noted in #8(a) above, Condition 6(b) in PUD Resolution Z-02-020 does not need to be amended.

***10. Environmental Sciences staff advises there is information in the application that references FDEP release of conservation easement.***

As discussed in our meeting, DES Staff now has a copy of the FDEP release of conservation easement.

***11. Z-02-020 Condition 6(b) and DRI DO Condition G(5)(d)(1)ii requires a conservation easement dedicated to Lee County and the FDEP to be recorded. In the current NOPC application the request references FDEP release of conservation easement. Does the request include removing FDEP from the recorded conservation easement requirement? If so, please revise application documents to reflect.***

As noted in #8(a) above, the current request does not require any amendment to PUD Resolution Z-02-020. Condition 6(b) was met and does not need to be amended. The conservation easement was recorded. FDEP has unilaterally released any right it may have had with regard to the conservation easement, and it is unnecessary to change any of the requirements in Z-02-020.

***12. (a) The revised mangrove trimming plan dated May 2013 is more of a narrative and analysis document and should be titled as such. The document should also be revised to provide more detailed analysis on why a 20 foot NGVD height is needed given the previous approved trimming height is based on providing views for the first floor elevation. Please provide analysis of how 20 feet NGVD was identified as the needed minimum height.***

The revised and re-titled "Mangrove Trimming Plan Narrative and Analysis Document for Palmas Del Sol – May 2014" is enclosed. As requested, this document includes an analysis of why the 20' trim height is needed.

***(b) Please provide current photos of views that support the request.***

Current photos of the trimming corridor as taken from a first floor residence are provided.

***(c) Please provide the reason for the request to change the condition for method of trimming red mangroves and analysis on why needed. Is this request consistent with FDEP requirements?***

The reason for the request to change the condition for the method of trimming the red mangroves is to make the trimming plan consistent with the Florida Department of Environmental Protection (DEP) trimming guidelines.

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***(d) Please provide the reason for the request to change condition language from annual to biennial. Is this request consistent with FDEP requirements?***

The request for trimming every two years was made to provide an option to trim every two years rather than a requirement to trim each year.

***(e) Please revise the Monitoring section to provide a comparison of the habitat between the previously trimmed sections versus the non-trimmed sections of the ±10 acre preserve. Given the over 10 years of monitoring conducted, what effect has the trimming had on the mangrove fringe?***

Future monitoring reports will be revised to include a comparison of the habitat between the previously trimmed sections versus the non-trimmed sections as requested. In a review of the monitoring reports conducted to date, it is important to note that the trimming has not adversely affected the health or composition of the preserve area in that there has been no tree mortality as a result of permitted trimming activities, and the ground cover and mid-story species (primarily leather fern, smaller mangroves, and buttonwoods) have not been reduced in density. As observed during our site inspection with DES, both the trimmed and untrimmed areas exhibited similar canopy species as well as mid-story and ground cover species.

***(f) Is Dexter Bender doing the monitoring on the 3 examples provided? Are monitoring reports available? If so, please provide.***

While W. Dexter Bender & Associates, Inc. does supervise the mangrove trimming examples provided in the Narrative & Analysis document, there is no monitoring required or being conducted on these projects, so there are no monitoring reports available.

***13. Please provide a document to update the project narrative document dated July 2002 based on current site conditions, proposed request, proposed management, and revised exhibits.***

As noted in #12(a), the revised and re-titled "Mangrove Trimming Plan Narrative and Analysis Document for Palmas Del Sol – May 2014" is enclosed, and includes an analysis of why the 20' trim height is needed.

***14. (a) Please note the associated SFWMD ERP # 36-00430- S Conditions # 12 and 13 state that the preservation area may not be altered from natural state. (b) Please address why this permit was not amended to include the boardwalk, riprap and mangrove trimming which has already been done. Are any amendments needed or proposed?***

DRI 2014-00001

(a) While SFWMD ERP # 36-00430-S Conditions 12 and 13 state that the preservation area may not be altered from its natural state, the condition goes on to describe the types of activities which are prohibited: Construction of buildings, dumping of soil or trash, removal or destruction of trees, shrubs or vegetation (except for exotics), excavation or removal of soil, diking or fencing, and any other activities which are detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation. As demonstrated in this application, the minor reduction in trim heights will not cause any of those prohibited activities and, thus, these areas are in no way being "altered from their natural state." Furthermore, the 1996 Mangrove Trimming and Preservation Act definition for mangrove trimming provided in FS §403.9325(1) states that for the purpose of §§403.9321-403.9333, " 'alter' means anything other than trimming of mangroves." The DEP permit specifically provides for the trimming of mangroves only. In regards to the existing DEP

General Permit to trim mangroves for the project, the permit must be modified to denote trimming to a minimum height of 20' rather than 30' as provided.

- (b) As noted above, mangrove trimming is consistent with and not prohibited by the water management permit. In 2005 the developer, Grosse Pointe Associates, Ltd., obtained Lee County Permit DSH2005-00593 for construction of the Boardwalk and Observation Deck as the owner of the property. Why, or whether or not, a water management permit was also obtained with regard to the boardwalk and observation deck is a matter with which the present owners are not familiar.

***15. Has the applicant had any communication with FDEP on the proposed trimming to 20 feet NGVD? If so please provide documentation of any correspondence. Does the proposed activity require any amendment to the existing general mangrove Permit File No. 36-0152741-0003 which specifically states 32 feet NGVD within the permit language and on the Mangrove Trimming Plan?***

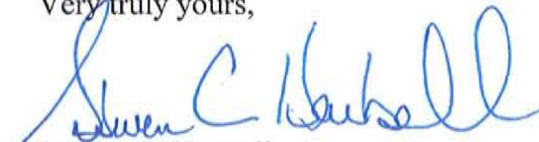
Yes. The general mangrove permit will be amended to comply with the approved trimming height.

***16. ES staff would like to conduct a site visit.***

As requested, the Applicant's consultant took ES staff to the site for a site visit .

Should you have any additional questions, please feel free to contact me.

Very truly yours,



Steven C. Hartsell

|     |                                                                  |           |
|-----|------------------------------------------------------------------|-----------|
| cc: | Jim Rollero, Pres., Palmas Del Sol Condominium Association, Inc. | via email |
|     | Robert Sher, Palmas Del Sol Condominium Association, Inc.        | via email |
|     | Ann Hamilton, Palmas Del Sol Condominium Association, Inc.       | via email |
|     | Parke Lewis, Dex Bender and Associates                           | via email |

Encl. Waiver of submittal documents  
Opinion Letter  
Mangrove Trimming Plan Narrative and Analysis Document for Palmas del Sol – May 2014  
Draft Seventh Amended DRI Development Order

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# WAIVER OF SUBMITTAL DOCUMENTS

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# REQUEST FOR SUBMITTAL REQUIREMENT WAIVER FOR UNINCORPORATED AREAS ONLY

Upon written request, the Director may modify the submittal requirements for Public Hearings, Development Orders, Limited Review Development Orders and other Administrative Action Applications where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the Director's written response must accompany the application submitted and will become a part of the permanent file.

## APPLICATION FOR WAIVER OF REQUIRED SUBMITTAL ITEMS (indicate the appropriate application type)

- ☐ Public Hearing - General Requirements (34-202)  
☐ Public Hearing - Mining Excavation Planned Development (12-110)  
☒ Public Hearing - Additional Requirements for:  
    ☒ Development of Regional Impact (34-203(a))  
    ☐ Planned Developments (34-203(b))  
    ☒ Planned Development Amendment (34-203(b))  
    ☐ Rezoning Other than Planned Developments (34-203(c))  
    ☐ Special Exceptions (34-203(e))  
    ☐ Variances (34-203(f))  
    ☐ Limited Amendment to Existing Mine Zoning Approval [12-121(j)]  
    ☐ Compact Community Planned Development (32-502)  
    ☐ Private Recreational Facilities Planned Development (34-941(g))  
☐ Development Order - Submittal Requirements (10-152)  
    ☐ Application Form and Contents (10-153)  
    ☐ Additional Required Submittals (10-154)  
☐ Limited Review Development Order - Submittal Requirements (10-152)  
    ☐ Required Submittals (10-175)  
☐ Administrative Action Application Requirements [34-204(a)]  
State the Type of Administrative Application: \_\_\_\_\_

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PRE 2014-00018

### PLEASE PRINT OR TYPE:

STRAP Number: 30-45-24-13-0000A.0000  
Name of Project: River's Edge PUD (Palmas Del Sol Condo Assn. Conservation Easement amendment)  
  
Name of Agent: Steven C. Hartsell  
Street Address: 1833 Hendry St.  
City, State, Zip: Fort Myers, FL. 33901  
Phone Number: 239-336-6244 Email Address: SteveHartsell@PaveseLaw.com  
  
Name of Applicant\*: Palmas Del Sol Condominium Association, Inc.  
Street Address: 11620-11660 Court of Palms  
City, State, Zip: Fort Myers, FL. 33908-6552  
Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

\*If applicant is not the owner, a letter of authorization from the owner must be submitted.

PRE 2014 - 00018

LEE COUNTY COMMUNITY DEVELOPMENT  
P.O. BOX 398 (1500 MONROE STREET), FORT MYERS, FLORIDA 33902  
PHONE (239) 533-8585

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A. SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

|    | Section Number | Requirement                  |
|----|----------------|------------------------------|
| #1 | 34-202(a)(1)   | Sketch and Legal Description |
| #2 | 34-373(a)(4)2  | Boundary Survey              |
| #3 |                |                              |
| #4 |                |                              |
| #5 |                |                              |
| #6 |                |                              |
| #7 |                |                              |
| #8 |                |                              |
| #9 |                |                              |

B. SCOPE OF PROJECT AND REASON(S) FOR REQUEST:

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver(s) should be approved. Use additional sheets if necessary and attach to this application form. (Please print or type)

This is a request to amend only the trim height of trees in the 10.17 acre Conservation Easement (also requiring amendment of the same language in the River's Edge/Gulf Harbour DRI). A new survey or sketch/legal description is unnecessary, and would be an unneeded expense, to adequately review the matter since we have provided the Deed of Conservation Easement prepared by the Lee County Attorney's Office (Instr.#5773553) which contains (as Exhibits A-1 and A-2) the sketch and legal of this 10.17 acre CE, and a copy of the Special Warranty Deed (Instr.#5805730) conveying that same 10.17 acres to Palmas Del Sol.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

Shawn C. Hubbard  
Signature of Applicant

1-29-14  
Date

.....  
FOR STAFF USE ONLY  
.....

DIRECTOR'S DECISION:

- ☐ Request Denied  
☒ Request Approved  
☐ Request Approved Per Attached Comments

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Pam Howard  
Director Signature

2.14.14  
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Date

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Property Appraiser's Parcel Identification No.:  
30-45-24-13-0000A.0000

Instrument prepared by and after recording, return to:  
Steven I. Winer, Esq.  
Roetzel & Andress, L.P.A.  
2320 First Street, Suite 1000  
Fort Myers, FL 33901

INSTR # 5805730  
Official Records BK 03919 PG 1556  
RECORDED 05/01/2003 01:05:27 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 15.00  
DEED DOC 0.70  
DEPUTY CLERK G Sherwood

(Space above this line for recording data)

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**SPECIAL WARRANTY DEED**

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THIS SPECIAL WARRANTY DEED made the 30<sup>th</sup> day of April, 2003,  
by **GROSSE POINTE ASSOCIATES, LTD., a Florida limited partnership**, whose post office address  
is 15065 McGregor Blvd., Suite 108, Fort Myers, FL 33908 (hereinafter called the "Grantor"), to  
**PALMAS DEL SOL CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation**,  
whose post office address is 15065 McGregor Blvd., Suite 108, Fort Myers, FL 33908 (hereinafter called the  
"Grantee").

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars and other  
valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens,  
remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Lee County,  
Florida, viz:

**SEE EXHIBIT "A" ATTACHED HERETO.**

THIS INSTRUMENT WAS PREPARED WITHOUT BENEFIT OF TITLE EXAMINATION.

**SUBJECT TO** covenants and restrictions with respect to maintenance and use consistent with  
terms and conditions of mangrove trimming including the annual trimming events set forth in the  
Fourth Amendment to the River's Edge Yacht and Country Club DRI Development Order as DRI  
#12-8182-21.

**SUBJECT TO** the terms and conditions of that certain Deed of Conservation Easement recorded  
in O.R. Book 03893, Page 2562, Public Records of Lee County, Florida.

**SUBJECT TO** the terms and conditions of that certain Binding Agreement with the Department  
of Environmental Protection recorded in O.R. Book 03899, Page 0678, Public Records of Lee  
County, Florida.

**SUBJECT TO** easements and restrictions of record.

**TOGETHER**, with all the tenements, hereditaments and appurtenances thereto belonging or in  
anyway appertaining.

**TO HAVE AND TO HOLD**, the same in fee simple forever.

**AND** the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said

land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, the said Grantor has executed these presents on the day and year first above written.

Signed, sealed and delivered  
in our presence:

GROSSE POINTE ASSOCIATES, LTD., a Florida  
limited partnership

By: Grosse Pointe Development Company, Inc.,  
a Florida corporation, its General Partner

Rita L. Keltner  
Witness Name: RITA L. KELTNER

By: Robert D. Hensley, President

Pamela A. Gelling  
Witness Name: Pamela A. Gelling

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 30<sup>TH</sup> day of APRIL, 2003,  
by ROBERT D. HENSLEY, President of Grosse Pointe Development Company, Inc., a Florida corporation,  
General Partner of Grosse Pointe Associates, Ltd., a Florida limited partnership, on their behalf. He is ☒ personally known to me or [ ] produced as identification.

(Notary Seal)



Rita L. Keltner  
Commission # DD 023346  
Expires May 7, 2005  
Bonded Through  
Atlantic Bonding Co., Inc.

Rita L. Keltner  
NOTARY PUBLIC  
Print Name: RITA L. KELTNER  
Serial No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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**DESCRIPTION**

lying in Section 30, Township 45 South, Range 24 East,  
Lee County, Florida

A tract or parcel of land situated in the State of Florida, County of Lee, lying in Section 30, Township 45 South, Range 24 East, being a part of Tracts "E" and "N", Gulf Harbour Yacht and Country Club subdivision as recorded in Plat Book 55, pages 6 through 27, Public Records of Lee County, Florida, and being further bounded and described as follows:

COMMENCING at the southwest corner of said Section 30 and the southwest corner of said Tract "N" of Gulf Harbour Yacht and Country Club; thence along the west line of said Section 30 and said Tract "N", N.01°03'43"W. for 1367.26 feet to the POINT OF BEGINNING of the parcel herein described; thence leaving said west line, N.32°31'10"E. for 48.65 feet; thence N.00°23'02"E. for 112.23 feet; thence N.00°15'03"E. for 72.02 feet; thence N.37°36'48"E. for 36.09 feet; thence N.70°31'47"E. for 56.77 feet; thence N.69°41'22"E. for 106.99 feet; thence N.72°51'33"E. for 105.62 feet; thence N.77°24'17"E. for 98.83 feet; thence N.69°39'45"E. for 128.70 feet; thence N.72°45'10"E. for 168.73 feet; thence N.72°22'58"E. for 116.54 feet; thence N.72°35'45"E. for 126.38 feet; thence N.69°03'37"E. for 121.93 feet; thence N.75°17'23"E. for 75.31 feet to the northwest corner of Lot 38 of Gulf Harbour Yacht and Country Club Phase One as recorded in Plat Book 56, pages 1 through 4, Public Records of Lee County, Florida; thence N.12°55'53"W. for 199 feet, more or less, to the Mean High Water line of the Caloosahatchee River; thence westerly along said Mean High Water line for 1120 feet, more or less, to an intersection with said west line of Section 30, bearing N.01°03'43"W. from the Point of Beginning; thence along said west line of Section 30, S.01°03'43"E. for 681 feet, more or less, to the Point of Beginning of the parcel herein described;  
parcel contains 10.17 acres, more or less;  
said parcel subject to all easements, rights of way and restrictions of record;  
bearings are based on the west line of said Section 30 being N.01°03'43"W.

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## OPINION LETTER

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# PAVESE LAW FIRM

CHRISTOPHER J. SHIELDS  
Board Certified Real Estate Lawyer  
Also Admitted in New York  
Direct dial: (239) 336-6245  
Email: ChristopherShields@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Drawer 1507, Fort Myers, Florida 33902-1507 | (239) 334-2195 | Fax (239) 332-2243

May 16, 2014

Alvin "Chip" Block, Senior Planner  
Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, Florida 33901

**RE: *Palmas Del Sol DRI Application***  
***Our File No. 69205.010***  
***LDC §34-201(a)(1)(b)3 Opinion Letter***

Dear Mr. Block:

Please be advised that I represent the Palmas Del Sol Condominium Association, Inc. Pursuant to LDC §34-201(a)(1)(b)3 I attest that I have examined the Declaration of Condominium, the Bylaws of the condominium association, and (if any) all other relevant legal documents, timeshare documents or deed restrictions, as applicable, and conclude that applying or petitioning to Lee County to amend the River's Edge Yacht & Country Club DRI for, among other things, the purpose of reducing the trim height of trees located in the 10 acre Conservation Easement area located adjacent to the Palmas Del Sol Condominium in Gulf Harbour does not violate any of the provisions therein, or any federal or state laws regulating condominiums, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the DRI amendment (and associated approvals) by the County would violate no such rights.

Very truly yours,

  
Christopher J. Shields

CJS:jam

cc: Client

Steven C. Hartsell

C:\Users\jam\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\PBQNTXFZ\CJS Opinion Letter 5-14-14.wpd

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4635 S. DEL PRADO BLVD.  
CAPE CORAL, FLORIDA 33904  
(239) 542-3148

4524 GUN CLUB ROAD, SUITE 203  
WEST PALM BEACH, FLORIDA 33415  
(561) 471-1366

# MANGROVE TRIMMING PLAN

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**Mangrove Trimming Plan  
Narrative and Analysis Document  
for Palmas Del Sol**

**May 2014**

Prepared for:

**Palmas Del Sol Condominium Association  
11660 Court of Palms  
Fort Myers, FL 33908**

Prepared by:

**Parke Lewis, Senior Biologist  
W. Dexter Bender & Associates, Inc.  
4470 Camino Real Way, Suite 101  
Fort Myers, FL 33966  
(239) 334-3680**

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## **INTRODUCTION**

## **COMMUNITY DEVELOPMENT**

The 10.17 acre mangrove preserve area at Palmas Del Sol consists primarily of white mangroves, black mangroves, red mangroves, buttonwoods and a ground cover understory of leather fern. The density of mature mangroves within the fringe varies from roughly 6'-8' on center along the river shoreline up to about 20' on center in the interior of the preserve. The mangrove fringe along the river contains no areas of open understory. Large mature trees consisting of black, red and white mangroves are scattered throughout the trimming area with red mangroves being the predominant species along the shoreline. Other species which can be found in the preserve include scattered cabbage palm, coin vine and pond apple in the drier portions of the preserve. Prior to the first exotic and nuisance vegetation removal event in December of 2002, extensive infestation by the exotic tree species Brazilian pepper, seaside mahoe and Australian pine were found within the preserve, particularly on the old spoil deposits and the sand and shell ridge along the river front. In order to provide for a view of the river from the residences at Palmas Del Sol, the FDEP issued General Permit # 36-0152741-003 to trim mangroves on August 13, 2001. Trimming within the preserve consisted of annual trimming in which the mangroves within the designated view corridors were to be trimmed to a height of no less than 32' NGVD. Outside of the trimming corridors, mature mangroves vary in height from 25' to 35' with trees in excess of 40' also present.

Trimming of mangroves in the indigenous preserve area is provided for with specific conditions in River's Edge Yacht and Country Club DRI Development Order #12-8182-21, as amended; Zoning Resolution Z-02-020; and a Conservation Easement recorded at Lee County Official Records Book 3893, Page 2562. These conditions do not prohibit trimming of other native vegetation (e.g., buttonwoods), and specifically allow for the mangroves to be trimmed to a final height of 32' NGVD (approximately 30' from the substrate) and to be maintained at that height on an annual basis.

## **PROPOSED TRIMMING**

In order to provide for the residents of the Palmas Del Sol Condominiums to have:

"visual access to the river from the rear of the lot through the vegetation in the buffer and may be allowed for specific appropriate preservation area[s] along the riverfront. Selective trimming of trees and vegetation within the preservation and buffer areas for this purpose may be permitted only in those areas specifically designated in this Development Order ... " as described in the DRI Development Order Section, II.G.5.a.

The applicant is requesting that the existing Florida Department of Environmental Protection Permit (FDEP # 36-0152741-003) and the Lee County DRI Development Order and Conservation Easement language be revised so that the minimum trim height within "view corridors" be changed from 30' to 20' as measured from the substrate. This requested change is compatible with existing FDEP General Permit to Trim Mangroves guidelines and mangrove/native vegetation trimming projects on similar sites and meets the following conditions as described under F.S. 403.9327(1)(a) :

1) "The trimming is supervised or conducted exclusively by a professional mangrove trimmer."

- *The proposed trimming will be supervised exclusively by a professional mangrove trimmer.*

2) "The trimming is conducted in an area where the Department has not delegated the authority to regulate mangroves to a local government."

- *The project is located in Lee County. The County does not have delegated authority to regulate mangroves. However, Lee County has imposed additional restrictions on the trimming of mangroves and other native vegetation in the Palmas Del Sol preserve as part of the DRI Development Order.*

3) "No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove."

- *No herbicide or chemical defoliants will be used.*

4) The mangroves subject to trimming under the permit do not extend more than 500' waterward as measured from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline.

- *All trimming corridors are less than 500' in depth from the most landward mangrove to the river.*

5) No more than 65% of the mangroves along the shoreline which exceed 6' in pre-trimmed height as measured from the substrate will be trimmed, and no mangrove will be trimmed so that the overall height of any mangrove is reduced to less than 6' as measured from the substrate.

- *The mangrove trimming corridors consist of less than 65% of the mangroves along the shoreline which exceed 6' in pre-trimmed height. And no mangroves are to be trimmed below 20' in height as measured from the substrate. As such, the proposed revisions fall under the criteria necessary to obtain a general permit to trim mangroves.*

The trimming conducted as proposed above will be significantly less than the trimming allowed down to the 6' minimum trim height provided for under a general permit. Furthermore, the 20' height as the final configuration is being applied to all vegetation in the trimming corridors, including allowing those currently less than 20' in height to grow up to 20'.

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## PURPOSE OF THE 20' MINIMUM TRIM HEIGHT

As shown in the attached photographs taken of the central trimming corridor from a first floor residence, there is a slight improvement in the view of the river immediately after the annual trimming event. However, the view remains very limited and the improvement quickly deteriorates as the mangroves and buttonwoods in the trimming corridor grow back. Annual trimming removes between 3' and 4' vertical height of vegetation, depending on tree species. In order to provide for an adequate view of the river from the first floor residences a vertical reduction of the final trim height minimum to 20' will provide an adequate view of the river that is not lost in the interim between trimming events. A minimum final configuration of 20', achieved by trimming in phases annually, and removing a maximum of no more than 25% of the foliage annually will provide an adequate view of the river from the first floor residences. This limited additional trimming will provide an adequate view without adversely affecting the health of the mangrove fringe. The 20' minimum trim is proposed because this will allow for a 10' vertical reduction that will allow for an adequate view of the river even after 3'-4' of growth has occurred.

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## MONITORING

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The Palmas Del Sol Tenth Annual Monitoring Report was submitted to Lee County in July of 2012. This report documents the overall condition of the preserve as being in satisfactory condition meeting and exceeding the requirements of plant survivability and the limitations on exotic and nuisance vegetation presence as required under the Development Order. The preserve area is treated annually for the presence of exotic and nuisance vegetation, primarily Brazilian pepper, seaside mahoe and moon vine. Currently the preserve area is free of exotic and nuisance vegetation. Permitted trimming of mangroves and other native vegetation within the view corridors has not resulted in any tree mortality. Furthermore, sampling data from the Tenth Annual Monitoring Report depicts an increase in ground cover and mid-story vegetation within the trimming corridors, with overall native vegetation densities in excess of 90%. This can be attributed to the continued growth of untrimmed vegetation at heights lower than 30' in addition to an increase in ground cover vegetation such as leather fern, immature buttonwoods and mangroves that have naturally recruited into these areas with the increase in sunlight as the canopy trees in the corridors were trimmed.

Due to inadequate supervision by the landscape company before W. Dexter Bender & Associates, Inc. began supervision, mangroves had been over-trimmed to heights ranging from 15' to 22' in height, below the approved 30' minimum trim height. Lee County identified that problem (2009 Lee County Enforcement Case, ENV2009-00034) and required remedial measures to be taken under better supervision. A site inspection by Lee County Environmental Sciences staff in September of 2011 revealed that the trees were at that time approximately 25' to 34' in height. In addition, there has been a reasonable amount of time for the individual trees and canopy cover to recover since the 2009 Enforcement Case.

The Conservancy of Southwest Florida Collection Protocol for determining health of mangrove trees (Updated 2010/2012) and based upon Standardized Mangrove Data Collection Protocols developed for previous tree assessments and substantiated by work described by Duke *et. al.* 2010, Saintilin 2010 and FRC Environmental 2008/2010 provides the following categories and descriptors for assessing mangrove condition: "In general healthy mangroves have been described as living trees, saplings and seedlings that have green leaves with little evidence (less than 20%) of yellowing or curling, no abnormal leaf loss; little evidence of insect damage or disease (less than 20%) and no epicornic growth. Whereas unhealthy mangroves have been described as living trees, saplings and seedlings that may have die backs and/or receding canopies, many yellowing or curling canopies; extensive insect damage and/or disease; adventitious roots, and/or epicornic growth."

Consistent with the observations of Lee County Division of Environmental Sciences staff, we have observed that most all trees over trimmed in the corridors have fully recovered. In general, tree structure height has been reduced, but the canopy itself has closed in and trees are growing normally and are healthy as described above.

There are dozens of similar local FDEP permitted mangrove trimming projects in preserve areas that consist of of long term maintenance trimming of mature mangroves without adverse effects to the preserve area. A few examples consistent with the 20' trim height are provided below:

#### The Lot "D" Safety Harbor project of North Captiva

These mangroves were initially illegally trimmed in the early 1990s. As a condition of the Consent Agreement, the FDEP allowed for a minimum trim height of 20' to be maintained. The mangrove fringe contains all three species of mangroves and has been continuously trimmed since the late 1990s. Including severe mangrove destruction as a result of hurricane Charley in 2004, this mangrove fringe is healthy in good condition and is trimmed on an annual basis to maintain the 20' configuration.

#### Sea Isles Condominium Fort Myers Beach

The mangroves along the residential area shoreline and within the preserve have been continuously trimmed under an FDEP general permit since 2002. Trees which were initially up to 40' in pre trimmed height were reduced through annual trimming in height to approximately 15' over a period of several years.

#### Harbor Place Condominium

These mangroves are located directly to the west of Palmas Del Sol. The mangroves in this preserve area are similar in height and configuration to the adjacent Palmas del Sol mangrove fringe. These Harbor Place mangroves are being trimmed under an FDEP general permit to reduce their height and configuration to improve the view of the river from the residences. The mangroves may be trimmed to a minimum height of 6'. The

FDEP later issued a second General Permit to allow for a larger trimming corridor than was provided for in the initial permit.

### **CONCLUSION**

The proposed revised minimum trim height of 20' is consistent with FDEP guidelines for trimming mangroves. This trimming can be conducted in stages and under the specific conditions of an FDEP General Permit, and with continued monitoring of the preserve and annual reports to Lee County to ensure the stability of a healthy mangrove forest preserve will be assured.

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View looking towards the river from the 1<sup>st</sup> floor of the central building after recent trimming was completed. 3/14



View looking upriver from the 1<sup>st</sup> floor of the central building after recent trimming completed. 3/14

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Another view with "no trimming" area in the background.3/14



View upriver looking along the view corridor with "no trimming" zone in the background.3/14

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**DRAFT SEVENTH AMENDED  
DRI DEVELOPMENT ORDER**

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~~FIFTH~~ SEVENTH AMENDED DEVELOPMENT ORDER<sup>1</sup>

FOR

RIVER'S EDGE YACHT AND COUNTRY CLUB

(A/K/A GULF HARBOUR)

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #12-8182-21  
COUNTY CASE #81-09-08-DRI(c)

LET IT BE KNOWN that, pursuant to §380.06, Florida Statutes, the Board of County Commissioners of Lee County, Florida, considered the Application for Development Approval filed by Ramar Group, regarding a Development of Regional Impact consisting of 548 acres, at a public hearing and adopted the original development order for the River's Edge Yacht and County Club Development of Regional Impact (DRI) on April 19, 1982.

WHEREAS, the River's Edge Yacht and County Club DRI was amended on March 16, 1992 to decrease the density from 4,380 dwelling units to 2,071; relocate 6 golf holes, the golf course club house, tennis courts, marina basin and marina village; reduce the number of boat slips from 250 to 190 slips; and extend the buildout date 4 years and 11 months to May 4, 1998; and

WHEREAS, a second amendment to the River's Edge Yacht and County Club DRI was adopted on March 21, 1994 to modify the location and design of the marina facility; and

WHEREAS, a third amendment to the River's Edge Yacht and Country Club DRI was adopted on March 19, 2001 to (1) reduce the number of dwelling units from 2,071 to 1,987; (2) eliminate 200 hotel units; (3) replace the 65,000 square feet of commercial with a 5,000 square

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<sup>1</sup> This is a codification and restatement of all DRI development orders rendered with respect to the River's Edge Yacht and County Club DRI, including actions taken May 5, 1982, March 16, 1992, March 21, 1994, March 19, 2001, October 7, 2002, and—October 31, 2005, September 11, 2007, and  
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foot ship's store and 30,000 square foot club house; (4) eliminate the 250 seat restaurant; and (5) extend the buildout date an additional 7 years to May 4, 2005; and

WHEREAS, a fourth amendment to the DRI Development Order was adopted on October 7, 2002, to allow construction of a boardwalk with observation platform with mangrove trimming within the established Mangrove Preservation Area(Tract E); and

WHEREAS, a fifth amendment to the DRI Development Order was adopted on October 31, 2005, to extend the buildout date three years from May 4, 2005 to May 4, 2008, allowing issuance of building permits and construction on the remaining single-family home lots (currently less than 20 lots) within the DRI boundary; and

WHEREAS, a sixth amendment to the DRI Development Order was adopted on September 11, 2007, to grant the three-year statutory extension of the buildout date to May 4, 2011, and the termination date to May 4, 2013; and

WHEREAS, on February 6, 2014, a Notice of Proposed Change was filed by Palmas Del Sol Condominium Association, Inc. to allow the approved mangrove trimming height within the established Mangrove Preservation Area to be reduced from 32' NGVD to 20' NGVD; and

WHEREAS, under FS §380.06(19)(e)2 the requested amendment to reduce the mangrove trimming height is not a substantial deviation; and

WHEREAS, the Board of County Commissioners finds and determines that based upon the evidence in the record the proposed amendment does not constitute a substantial deviation warranting further DRI Review; and

NOW THEREFORE, it is resolved by the Board of County Commissioners that the development order for River's Edge Yacht and County Club DRI is further amended as follows:

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

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

A. The legal description of the River's Edge Yacht and County Club DRI property (aka Gulf Harbour) is set forth in attached Exhibit A.

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B. The River's Edge Yacht and County Club DRI is a Development of Regional Impact consisting of approximately 548 acres. The proposed development is depicted on Map "H", attached as Exhibit B and includes:

1. 1,987 dwelling units of which up to 788 may be single-family (detached and zero lot line type units) and up to 1,199 multi-family on a total of 250.3 acres; approved, but unbuilt multi-family units may be exchanged for single-family units, provided that the resulting total mix of approved multi-family and single-family dwelling units do not exceed a gross trip generation rate of 1,349 p.m. peak hour trips as calculated from the fitted curve formulas of the 6th Edition of the ITE Trip Generation Manual for land use categories 210 and 230;
2. 135 acre 18 hole golf course and 30,000 square foot golf clubhouse with 250 parking spaces;
3. 190 wet berth marina and 5,000 square foot ancillary ship's store;
4. 7,000 gross square foot health club;
5. a 16 tennis court complex;
6. 70.0 acres of lakes;
7. 18.23 acre refined vegetation preservation buffer including:
  - a. 14.02 acre mangrove and listed plant species preserve area south of the proposed marine;
  - b. a 3.88 acre eagles perch management and listed plant species preservation island of 3.88 acres;
  - c. a 0.33 acre shoreline listed plant species preservation area of north of the proposed marina; and
8. 250.7 acres of open space (including golf course, preservation areas, and private open space, but excluding lake, marina mitigation and basin areas).

C. The subject property is currently zoned Planned Unit Development (PUD) in accordance with the Lee County Land Development Code and Lee County Ordinance 93-26.

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

E. The proposed development:

1. is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of §380.05, Florida Statutes;
2. will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area; and
3. is consistent with the Lee County Comprehensive Plan and the Lee County Land Development Code.

F. The Southwest Regional Planning Council has reviewed the proposed development and adopted recommendations subsequently forwarded to Lee County pursuant to §380.06, Florida Statutes. The development, as proposed in the Application for Development Approval and modified by this amended Development Order, is consistent with the recommendations issued by the Southwest Regional Planning Council in accordance with §380.06(12).

G. The proposed conditions set forth below meet the criteria found in §380.05(15)(d), Florida Statutes.

H. ~~The project buildout date is May 4, 2008. The request to amend the DRI Development Order to allow the reduction in the trim height of mangroves and other vegetation in the Mangrove Preserve area from 32' NGVD to 20' NGVD to provide vistas for dwelling units is not a substantial deviation under § 380.06(19)(c)2 Florida Statutes.~~

## II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

### A ENERGY

1. The River's Edge development must comply with the Energy Code as adopted and in force at the time of commencement of each phase of the development.
2. River's Edge must construct a jogging and bicycle trail system as described in the Application for Development Approval (hereinafter referred to as the ADA) and the Master Site Plan. That system is to connect all points within the project. Benches and special parking areas are to be provided for bicycles and golf carts at each commercial and recreational area. That

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

portion of the system alongside McGregor Boulevard must be built in conformance with the Lee County Comprehensive Bicycle Facilities Plan and is to be dedicated to the County.

3. The Developers of River's Edge must design all facilities for optimum energy efficiency utilizing state-of-the-art energy conservation techniques, including but not limited to the following:

- proper roof and wall insulation
- glazing
- energy efficient appliances
- structure orientation for solar energy and natural ventilation
- structural shading, e.g., inclusive of porch/patio areas in residential units and utilization of roof overhangs for low-rise buildings
- proper landscaping throughout the project and planting of native shade trees and understory wherever appropriate for all active and passive recreation areas, streets and parking areas
- site design and landscaping to enhance energy conservation

4. River's Edge must cooperate with the Lee County Transit System in locating and providing bus stops and shelters within the development.

5. Alternate energy devices, such as solar collectors, may not be prohibited unless it is determined necessary for the protection of the health, safety and welfare of the residents of the River's Edge Yacht and Country Club DRI.

#### B. TRANSPORTATION

1. The River's Edge development is responsible for development of all roads and bike paths within the River's Edge development.

2. *Development Impact/Phasing Schedule.* The transportation impact assessment that forms the basis for this Development Order Amendment assumes the land uses and phasing schedule as set forth in attached Exhibit C with a project buildout date of May 4, 2005.<sup>12</sup>

3. *Annual Monitoring Program.* Pursuant to §380.06(18), Florida Statutes, the River's Edge DRI must submit an "Annual Monitoring Report" to the Lee County Department of Transportation (LCDOT), the Southwest Florida Regional Planning Council (SWFRPC), and the Florida Department of Community Affairs (DCA) each year until project buildout. If the local government does not receive the annual report or receives notification that the regional planning agency or the state land planning agency has not received the report, the local government must request in writing that the Developer submit the report within 30 days. The failure to submit the report after 30 days may result in the temporary suspension of the Development Order by the local government. At a minimum, the monitoring report must contain a.m. and p.m. peak hour peak season traffic counts (with turning movements) and a professionally acceptable level of service analysis, mutually agreed upon by the Applicant's engineer, LCDOT, FDOT, SWFRPC and DCA, at all project access locations onto McGregor Boulevard (SR 867) as well as at the following regional roadway segments and all intersections included within and at the end of those segments:

#### REGIONAL ROAD SEGMENTS

McGregor Boulevard (SR 867) from

Gladiolus Drive to Pine Ridge Road  
Pine Ridge Road to Cypress Lake Drive  
Cypress Lake Drive to College Parkway  
College Parkway to Winkler Road

Cypress Lake Drive from

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<sup>2</sup> To obtain approval for the Third Amendment to the DRI, the applicant submitted a full transportation analysis, with a buildout horizon of 2005. Subsequent traffic analysis has not been submitted for review. Therefore, May 4, 2005 is the appropriate reference for purposes of traffic analysis.

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

McGregor Boulevard to South Pointe Blvd.  
South Pointe Blvd. to Winkler Road  
Winkler Road to Summerlin Road

Gladiolus Drive from

Pine Ridge Road to A&W Bulb Road  
A&W Bulb Road to Winkler Road

Pine Ridge Road from

Gladiolus Drive to McGregor Boulevard

San Carlos Boulevard from

Summerlin Road to Kelly Road  
Kelly Road to Gladiolus Drive

#### INTERSECTIONS:

Gladiolus Drive at Pine Ridge Road  
McGregor Boulevard at San Carlos Boulevard/Gladiolus Drive  
McGregor Boulevard at Iona Road  
McGregor Boulevard at south project entrance  
McGregor Boulevard at north project entrance/Pine Ridge Road  
McGregor at A&W Bulb Road  
McGregor Boulevard at Cypress Lake Drive  
San Carlos Boulevard at Kelly Road

The above off-site intersections and roadway segments were identified as significantly impacted by greater than 5% utilization of the adopted level of service volume in the traffic impact statement submitted for the 1999 Notice of Proposed Change. Peak season peak hour traffic counts and level of service calculations must be performed by the Developer's traffic consultant and submitted as part of the annual monitoring report for the significantly impacted road segments.

The purpose of this monitoring report is to: (1) determine if the projected traffic for the Year 2005 in the traffic impact assessment for River's Edge DRI Amendment is exceeded by actual impacts; (2) assist LCDOT and FDOT in determining the proper timing of necessary roadway improvements within the Lee Plan traffic district encompassing the River's Edge DRI

Doc. #374

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MAY 27 2014

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DRI 2014-00001

(currently District 4); (3) determine the project's external trip generation compared to the estimate of 1,115 net new external trips.

The following is recognized and understood:

- a. Traffic counts may be obtained from original machine and manual peak hour counts, Lee County Traffic Volume Reports and other DRI developments with similar monitoring requirements and other generally acceptable sources.
- b. In the event that construction has not begun on the land uses identified above by the date the monitoring report is due, a letter to the above agencies documenting the development status on-site may be considered an acceptable replacement to the above traffic monitoring for that year.

4. *Site Related Improvements.* In addition to the payment of monies and other obligations specified in the Development Order Amendment, the Developer, or its successor, is 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. The Developer, or its successors, must construct site-related roadway and intersection improvements within River's Edge DRI. The Developer must construct any site-related intersection improvements (including but not limited to signalization, if warranted, turn lanes, and additional through lanes found to be necessary by the governmental authority with jurisdiction of the roadway) as appropriate for the project's access intersections onto McGregor Boulevard (SR 867) throughout all phases of development.

When authorized by the Lee County Engineer or his designee, upon approval of plans by Lee County and FDOT, the Developer, or his successors, must build the necessary site related intersection improvements to achieve the adopted level of service for the following intersections:

McGregor Boulevard (SR 867) at

Pine Ridge Road/River's Edge North Entrance (The Developer's responsibility does not include the realignment of Pine Ridge Road)

River's Edge South Entrance

Doc. #374

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

Site-related improvements include any improvement deemed site-related at the time of construction under the definition contained in the Lee County Roads Impact Fee or Development Standards regulations, as either may be amended or replaced. The developer's obligation must 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 must be approved by the Lee County Engineer and FDOT. The Developer must pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access.

5. *Right-of-Way Dedications.* The property owner have previously dedicated right-of-way to allow widening and improvement of McGregor Boulevard (SR 867). The dedicated property has been appraised at \$191,000.

Additionally, the Florida Department of Transportation identified the need for a stormwater retention pond on the River's Edge site adjacent to McGregor Boulevard near the vicinity of Griffin Boulevard. The property owners dedicated this land to FDOT for the stormwater retention for the McGregor Boulevard widening improvements in 1995. The agreed upon value for this dedication was \$1,742,000.

The \$191,000 McGregor Boulevard widening right-of-way and the \$1,742,000 stormwater retention dedication is applicable to reduce the proportionate share of River's Edge DRI transportation impacts. The dedications are not eligible for road impact fee credits.

6. *Mitigation of Transportation Impacts:*

- a. As mitigation for the transportation impacts created by the development of River's Edge DRI in accordance with this amended development order the Developer, or its successors, must:
  - (1) dedicate property appraised at \$191,000.00 dollars for the McGregor Boulevard widening<sup>2</sup>; and

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<sup>2</sup> This obligation has been satisfied.

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MAY 27 2014

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DRI 2014-00001

- (2) dedicate property to Lee County for the stormwater retention area necessary for the McGregor Boulevard widening, subject to certified appraisals agreed upon by Lee County and the Developer and approved by the Lee County Department of County Lands, determining the fair market value for the dedication. If an agreement cannot be reached on the appraisal amount, then the two appraisers chosen by the Developer and Lee County respectively will chose a third independent appraiser to do an appraisal, and the value will be established by an average of the three appraisals<sup>3</sup>; and
- (3) pay Lee County Road Impact Fees at the fee schedule in effect at the time building permits are issued by Lee County. The Road Impact Fees applicable to development of the River's Edge DRI as approved in accordance with the third development amendment are estimated to be \$2,935,689; and
- b. Should the provisions of the roads impact fee regulations be repealed, made unenforceable or of no effect, they must nevertheless be required as payment for the transportation mitigation for the River's Edge DRI Development Order as described above.
- c. The Developer is informed that the Lee County Board of County Commissioners may adopt an interim operation improvement program and that such program may be applicable to this development.

7. Nothing contained in this Development Order Amendment is to imply or supersede any Florida FDOT permitting requirements.

8. To fulfill the obligations of the Developer to provide infrastructure, systems, facilities, and services as required herein, the Developer may employ a number of alternative management and financing mechanisms, including a uniform community development district ("UCDD") pursuant to Chapter 190, Florida Statutes, a property owners association, and special

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<sup>3</sup> This obligation has been satisfied. The agreed upon value is \$1,742,000. The developer also agreed to forgo any claim relating to property values in excess of the agreed upon value for the stormwater retention parcel transferred to FDOT.

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

assessments, all as applicable and as available by law. In the event the developer elects to use a UCDD, the Developer will enter into a Developer's Agreement with Lee County. Such Developer's Agreement will delineate boundaries of the UCDD and must be subject to and not inconsistent with Chapter 190, Florida Statutes, and this Development Order. The various agencies that review this Development Order do not by accepting this condition waive any right they may have to comment on and review the management and financing mechanism chosen by the Developer to manage and finance infrastructure, systems, facilities, services, and improvements pursuant to this paragraph. Furthermore, nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Benefit Unit (MSBU) or a Municipal Services Taxing Unit (MSTU), or a special assessment district, of improvements to various State and County arterial and collector roads to the degree the development is benefitted and has not already mitigated its impacts.

9. River's Edge 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 this section.<sup>4</sup> The contribution may not be reduced or refunded provided, however, that all other provisions of the Development Order also must govern.

10. If the proportionate share contribution due under the terms of this section is not paid in a timely manner, issuance of development approvals and building permits for River's Edge must immediately cease.

11. Compliance with all of the terms of the transportation related provisions of this development order must satisfy the substantive requirements related to regional transportation facilities of §§163.3177(10)(h) and 163.3202(2)(g), Florida Statutes (1989); Lee County concurrency regulations; the Lee County Comprehensive Plan, adopted pursuant to Chapter 163, Part II, Florida Statutes; and Rule 9J-5.0055, Florida Administrative Code, as they currently apply. Satisfaction of concurrency extends only through May 4, 2010.

### C. AIR QUALITY

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<sup>4</sup> Based upon the level of development approved through and including the Third Amendment to this development order, the only outstanding transportation mitigation payments due are the roads impact fees incurred at building permit issuance.

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DRI 2014-00001

The River's Edge development must comply with all applicable codes and apply for all required permits relative to air quality.

#### D. FIRE PROTECTION

The fire protection impacts created by development of River's Edge DRI will be mitigated by the payment of fire impact fees in accordance with the Lee County Land Development Code. No refund or credit for fire impact fees paid prior to the adoption of the third amendment to this development order will be issued.

#### E. PARKS

The park impacts created by development of River's Edge DRI will be mitigated by the payment of park impact fees in accordance with the Lee County Land Development Code. No refund or credit for park impact fees paid prior to the adoption of the third amendment to this development order will be issued.

#### F. SCHOOLS

River's Edge must provide off-street school bus loading zones for each development phase as deemed necessary by the Lee County School Board.

#### G. WATER SUPPLY, WATER QUALITY AND WILDLIFE HABITAT

1. No residential development may commence until sufficient water is available through a public water system to insure adequate fire flow, as well as a sufficient quantity of potable water, to adequately serve the residential development for which a building permit is requested.

2. During Phase I, River's Edge must plug all existing on-site wells in accordance with Lee County Division of Protective Services and South Florida Water Management District standards.

3. The River's Edge development must comply with the best management practices as defined by the South Florida Water Management District (SFWMD) with regard to the use of excavated areas and of wetlands acting as polishing and buffer areas and grassed swales for drainage purposes.

4. Pursuant to the drainage plans and permits approved by the SFWMD and the marina plans and permits approved by the Florida Department of Natural Resources, Florida Department of Environmental Protection, and U.S. Army Corps of Engineers, stormwater drainage will be

Doc. #374

12  
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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

collected within the drainage lake system and discharged via a system of weir control structures into spreader swales. Stormwater will not be discharged into the marina basin or the marina mitigation area. Direct discharge of water/effluent by River's Edge DRI into the Caloosahatchee River is prohibited. South Florida Water Management District plans for River's Edge, Phase One, Primary Drainage System Reference Plan, dated January, 1984, revised 12-27-84, Sheet 2 of 27, shows Lakes "O" and "L" running along Griffin Boulevard and Schultz Road, connected by a littoral zone at the northeast corner of the property at the corner of Schultz Road and Griffin Boulevards. Those two lakes must remain substantially in the configuration as shown on the Water Management District Plans referenced herein. Minor adjustments may be made but must not result in a net reduction of the area of Lakes "O" and "L" which must continue to run in an alignment as shown along Griffin Boulevard and Schultz Road.

- a. A row of shrubs and trees containing the Type "B" buffer vegetation (five trees and eighteen shrubs per 100 linear feet), suitably clustered subject to the approval of the Division of Environmental Sciences (DES), must be planted along the west side of the Lakes "O" and "L" along Griffin Boulevard. DES may not unreasonably withhold its approval.
- b. Littoral shelves as required in condition G.7. must be constructed along Lakes "O" and "L".
- c. A Type "B" buffer must be placed in front of Lakes "D" and "G" at the project entrance as shown on Map H attached as Exhibit B.

5. For the riverfront lots the following vegetation management and maintenance guidelines apply:

- a. The following: spider lilies, golden polypody, giant leather fern, and golden leather fern, will hereinafter be referred to as "listed species." The developer must provide a vegetation conservation buffer along the river, as shown by the surveyed preservation line on attached Exhibit D (Preservation Line Map stamped received 1-3-94), excluding the area approved for the marina basin construction, marina mitigation area, boat access and flushing channels, for the purpose of conserving existing native vegetation, planting additional native vegetation and allowing passive recreational uses. The buffer area must consist of the naturally vegetated area between the Caloosahatchee River and the refined preservation line described above. Additionally, the preservation areas include the entirety of the Eagles Perch Island. It is the intent of the refined vegetation preservation line to

provide natural shoreline stabilization through native vegetation and to protect a unique vegetation/wildlife habitat.

It is understood, however, that visual access to the river from the rear of the lot through the vegetation in the buffer and preservation is desired by the developer and may be allowed for specific, appropriate areas along the riverfront. Selective trimming of trees and vegetation within the preservation and buffer areas for this purpose may be permitted only in those areas specifically designated in this development order in the conditions specified below. Selective clearing for limited pedestrian access to the river via boardwalks or decks may also be permitted subject to the conditions specified below, but may not involve any dredge or fill activities of wetlands, any dredge or fill activities in the Caloosahatchee River, either the Eagles Perch Island or the Eagles Nest Island, nor involve preservation or buffer areas located west of a north-south line running through marker RP-44 as designated on Exhibit D and excluding the area identified on Exhibit F.

Access to the Eagle Perch Island must be allowed for purposes of 1) the removal and maintenance of invasive exotic vegetation; and 2) the limited pedestrian use. Access to the island and permitted activities are subject to the following conditions:

- (1) The Eagle Perch Island must be accessed via the dock/bridge located in the western portion of the marina basin as shown on the overall Marina Plan, dated October 5, 1993 attached as Exhibit E.
- (2) The point of access to the Eagle Perch Island may be a maximum 8 feet wide. The point of access must have a gate or similar obstruction to impede unauthorized vehicle (e.g. golf cart) access, yet allow pedestrian passage.
- (3) Golf carts are permitted on the Eagle Perch Island only when used for the intermittent removal and maintenance of invasive exotic vegetation.
- (4) Pedestrian uses permitted on the Eagle Perch Island include walking, bird watching, and nature observation. Pedestrian uses not permitted include any activities that involve boardwalks, development, trimming or removing of vegetation.

14  
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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

- (5) In the event bald eagles build a nest on the Eagle Perch Island, access to the island must be prohibited during the Southern bald eagle nesting season October 1 through May 15.
- b. The developer must remove all Brazilian pepper, melaleuca, and Australian pine from the refined preservation area with minimal possible disturbance to existing native vegetation.
- c. No development, boardwalks, trimming, or clearing of vegetation is allowed in the following preservation areas as depicted on attached Exhibit D:
  - (1) A complete ten foot radius around any Cabbage Palm with the golden polypody located between marks RP-1 and RP-2;
  - (2) Eagles Perch Island;
  - (3) A complete ten foot radius around the golden leather fern located nearly adjacent to RP-34;
  - (4) West of a north-south line running through RP-44 excluding the area depicted on Exhibit F which is subject to subsection G.5.d.

The following conditions apply to the remaining preservation and buffer areas not listed in (1) through (4) above:

Other than the removal of the exotics delineated above, there must be no removal of any trees or vegetation greater than or equal to four inches in diameter at breast height (4" D.B.H.), except that at least a maximum four foot wide pedestrian access, located outside the preservation areas specified above may be permitted on each lot notwithstanding other limitations. Selective removal/replacement and trimming of trees and vegetation may be permitted for the purpose of providing limited pedestrian access to the river via boardwalks or decks provided all necessary agency or governmental permits are issued as limited by condition G.5.a. above. However, at a minimum, the buffer must contain those trees that are greater than or equal to 4" D.B.H. as well as naturally existing native understory growth. However, those trees or shrubs that are less than 4" D.B.H., or existing native understory growth, may be removed for purposes of providing visual access to the river or pedestrian access as described herein if said understory vegetation is replaced with native coastal strand vegetation

replacement stock of not less than one gallon-size nursery grown containerized stock planted for any understory or shrubs removed, with a guaranteed survival rate of 80% after three years. Those trees that are removed must be relocated or replaced with a similar size tree. In no case must more than 20% of the refined preservation buffer be impacted for purposes of pedestrian access.

- d. Selective trimming of native vegetation, one boardwalk with an observation deck, and one access walkover is allowed on the property described in Exhibit F, which is a portion of tract E, per the following conditions:

(1) Mangrove (including other preserved trees) Trimming

- (a) Prior to any mangrove trimming within the 10 acre preserve adjacent to the Palmas del Sol condominiums the following must occur:

- i) The 10-foot wide rip-rap sill (breakwater) must be installed along the entire 10 acre mangrove preserve described in Exhibit F; and
- ii) A Conservation Easement, approved by the County Attorney's Office, dedicated to Lee County and the Department of Environmental Protection (DEP) detailing the restrictions of the DEP mangrove trimming permit and the limited trimming of red mangrove must be recorded; and
- iii) A deed donating and conveying clear title to Lee County or the State of Florida to the 11 acre parcel identified as STRAP 27-45-23-00-00005.0000 must be executed and recorded. Prior to recording, the deed must be reviewed and approved by the County Attorney's office. The applicant must pay all costs associated with the donation (e.g. surveys, closing fees, recording). Any exotic vegetation must be removed by hand from the 11 acre parcel prior to the County's acceptance of the donation.

- (b) Three corridors, each the width of each of the buildings (240', 244' and 152' wide) and extending from the landward boundary of the property described in Exhibit F North Northwest to the Caloosahatchee River will have selective mangrove trimming and maintenance as described as follows and as shown on Exhibit G.
- (c) All mangrove trimming must be conducted as permitted by the Florida Department of Environmental Protection (FDEP) General Mangrove Permit File No. 36-0152741-0003, which includes but not limited to the following conditions:
- (i) Mangrove Trimming must be supervised or conducted exclusively by a Professional Mangrove Trimmer.
  - (ii) No herbicide or other chemical may be used for the purpose of removing leaves of a mangrove.
  - (iii) Trimming must be conducted in stages so that no more than 25% of the foliage is removed annually, and the height and configuration of the mangroves trimmed under these general permits may be maintained.
  - (iv) The final height of trimmed mangroves and other preserved trees to be maintained is 20' 32' NGVD (approximately 18 30'+ from substrate). Only the mangroves within the mangrove trimming areas shown in Exhibit G may be trimmed. Because many of the trees in the mangrove trimming areas are less than 32' NGVD in height (as of June 2002), approximately thirty percent of the area will not be initially trimmed. Trees less than 20' 32' NGVD in the mangrove trimming area will only be trimmed as they exceed 20' 32' NGVD in the future to maintain the required elevation.
- (d) Red mangroves ~~trimming is limited on the main trunk to branches above 32' NGVD with a diameter of 1" or less. All other branches above 32' NGVD~~ will be trimmed in compliance with the FDEP Permit.

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

- (e) Once the final configuration and height (20' 32' NGVD) is achieved, the trimming corridors will be maintained by annual or biennial trimming events.
- (i) The property described in Exhibit F must be conveyed to the Palmas del Sol Condominium Association, subject to covenants and restrictions with respect to maintenance and use consistent with the Fourth Amendment to the DRI D.O.
  - (ii) The observation deck is limited to a maximum of 400 square feet, and must meet the standards of fishing piers in Land Development Code Section 26-73. The access boardwalk to the observation deck is limited to a 5-foot width. The boardwalk and observation deck must be field located to avoid impacts to the existing mangrove forest and individual large mangrove trees. Placement of the boardwalk must be within the limits of the existing berm along the west boundary of the mangrove preserve. The boardwalk and observation deck must be in substantial compliance with the Boardwalk and Observation Deck/Mangrove Trimming Plan prepared by W. Dexter Bender and Associates (attached as two-page Exhibit G).
  - (iii) A rip-rap revetment/breakwater system including red mangrove plantings shall be installed along the shoreline of the portion of the property described in Exhibit F to protect the shoreline from further erosion as shown on Exhibit H. The rip-rap sill must consist of rock material no less than 10-inches in diameter and no greater than 24-inches in diameter. The rock must be placed in a manner that does not damage the existing mangroves. Prior to issuance of a Certificate of Compliance for the rip-rap sill, the rip-rap must be planted with 3-gallon red mangrove seedlings or 3-gallon wetland plants such as leather fern placed 3-foot on center.

120B4.176

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

- (iv) A Lee County Dock and Shoreline Permit must be obtained for the boardwalk/observation deck and the rip-rap sill. A planting plan for the rip-rap sill showing the locations, species and container size must be submitted with the Dock and Shoreline Permit for the Division of Environmental Sciences staff review and approval.
  - (v) The entire 10.17 acre preserve shown in Exhibit F must be placed under a conservation easement granted to Lee County. The easement document must be reviewed and approved by the County Attorney's Office prior to recording in the public records.
  - (vi) The nuisance plant Moon vine (*Ipomoea* sp.) must be killed in place by an appropriate herbicide in the portion of the subject property described in Exhibit F.
  - (vii) The trimming corridors have been monitored annually for a period of ten (10) years from the date of initial trimming, and will continue to be monitored for another five years from the 2014 date of the next trimming below 32' NGVD. Annual reports will be submitted to Lee County Environmental Sciences that analyze tree health, canopy coverage, plant species present and wildlife observed.
  - (viii) The Division of Environmental Sciences staff must be notified prior to commencement of any mangrove trimming and invasive exotic vegetation removal. Invasive exotic vegetation removal must be done concurrently with the mangrove trimming. All invasive exotic vegetation including, but not limited to, Brazilian pepper, melaleuca, Australian pine, seaside mahoe, and carrotwood must be removed from the preserve area.
- e. Prior to the recording of a subdivision plat for riverfront lots, these vegetation maintenance and management guidelines must be included by the developer in recorded deed restrictions applicable to any residential lots located adjacent to the river and must be enforceable by a homeowner's association as well as being made

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MAY 27 2014

COMMUNITY DEVELOPMENT  
DRI 2014-00001

conditions of the DRI Development Order and local Development Order.

- f. Prior to any clearing in the single-family area along the river, there must be an on-site review by Lee County to insure that there is a complete radius of 25' preserved around any giant leather ferns, ten feet preserved around any golden leather fern or golden polypody, and that any spider lilies without a ten foot radius of preserved area will be relocated or replaced on the River's Edge site with comparable nursery stock.

6. In the Marina mitigation area, prior to clearing or construction activity, a "listed species" vegetation survey must be conducted and any "listed species" located landward of the preservation line shown on Exhibit D must be relocated or replaced elsewhere on-site in a suitably similar habitat.

The spider lilies located near markers RP-21 and RP-22 and between RP-33 and RP-36 must be appropriately relocated and transplanted to appropriate habitat on the Eagles Perch Island by a qualified botanist hired by the Developer prior to development of the flushing channel at this site. The methodology, location and details of this relocation and transplantation must be reported in the next annual monitoring report required to be submitted. Three years after the relocation, or in the 1997 annual monitoring report, whichever occurs first, a qualified botanist hired by the developer must report on the success or failure status of the relocation and discuss any discernible reasons surrounding the success or failure of the relocation.

7. For all manmade water bodies, except the marina basin, littoral shelves must be constructed at random locations along lake edges with a maximum depth of two feet below the lake control elevation, and must be planted with native wetland vegetation. This work must be done concurrently with construction of the final water management system.

8. In the 1989-90 bald eagle breeding season a bald eagle nest was constructed in the "witches broom" top of an Australian Pine tree located within 25 feet of the existing River's Edge golf course. Pursuant to the Lee County Bald Eagle Management Ordinance, River's Edge prepared a Southern Bald Eagle Habitat Management Plan for the River's Edge Yacht and Country Club that has been adopted by Lee County. The provisions of that plan, as it may be amended from time to time, are incorporated into this development order.

A resolution (#93-09-70) amending the Habitat Management Plan was approved by the Lee County Commission in September, 1993. The amendment deleted the specific nest

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

preservation measures outlined by the eagle management plan because the Florida Game Commission (FGC) and the Lee County Eagle Technical Advisory Committee (ETAC) determined the eagle nest abandoned and the perch tree had been blown down.

The resolution required the creation of a short term and long term plan encouraging bald eagles to continue utilizing River's Edge for perching and feeding. This plan must include:

- a. Designing and constructing an artificial perch for Eagle Perch Island. The structural design and placement of the perch must be subject to approval by the Lee County Eagle Technical Advisory Committee.
- b. A planting plan to install 35 South Florida slash pine trees (*Pinus elliotti* var. *densa*), a minimum of eight feet in height, on the Eagle Perch Island. The pines must be distributed and spaced to promote the growth of tall, straight trees with large crowns at the tops of the trees. The purpose of these pines is to provide future natural perching and roosting substrates for bald eagles.

The locations of the artificial perch and the pine plantings, including sizes and numbers, must be clearly illustrated on a local development order plan for the new marina. The artificial perch and the plantings must be installed and approved by Lee County Division of Natural Resources Management staff prior to issuance of the Certificate of Compliance for the marina.

However, if the plan is further amended, the Southwest Florida Regional Planning Council and the Department of Community Affairs must be notified of the proposed amendment.

9. There must be no entrance ways from River's Edge directly onto Griffin Boulevard or Schultz Road.

#### I. HURRICANE MITIGATION

River's Edge must provide sufficient storm shelter space during the construction of the first 512 residential units to accommodate at least 24% of that population. Such shelter space must meet the following conditions:

1. Located at least 16' above MSL.

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

2. No structures located within 150' of the shoreline may be utilized as shelter space.
3. Designated shelter space must be located in the interior hallways and similar areas with no openings leading directly to the exterior.
4. Shelter space must be provided at a ratio of 20' square feet per person.
5. A homeowners association must be established to coordinate and educate the development's residents as to the availability of shelter areas and procedures to follow during a storm event.
6. Structures that provide shelter space must be constructed to withstand 140 mph wind velocities and a professional engineer licensed and registered by the State of Florida must so certify.
7. Subsequent to construction of the shelter, River's Edge will provide comparative information and other data to assist Lee County in developing adequate on site storm shelter standards that may be included within the Lee County Building Code.
8. In lieu of the on-site storm shelter requirements set forth above, the River's Edge development may provide off-site storm shelter space. The space must be coordinated with and approved by the Lee County Emergency Management Services. The timing of this alternative must be as described above.

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

1. This Codified Development Order Amendment constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the River's Edge Yacht and Country Club DRI NOPC.

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

3. This Development Order Amendment is binding upon the Developer, its successors and assigns. Those portions of this Development Order Amendment that clearly apply only to the project Developer, will be binding upon any builder/developer who acquires any tract of land within the River's Edge Yacht and Country Club DRI.

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

4. 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 Amendment may be enforced by either party hereto in an action at law or equity, and all costs of such proceedings, including reasonable attorneys' fees will be paid by the prevailing party.

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

7. If any portion or section of this Development Order Amendment is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision will not affect the remaining portions or sections of the Development Order Amendment, which will remain in full force and effect.

8. The approval granted by this Development Order Amendment is limited. Approval may not be construed to obviate the duty of the Developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided.

9. Subsequent requests for local development permits will not require further review pursuant to § 380.06, Florida Statutes, unless the Board of County Commissioners finds, after due notice and hearing, that one or more of the following occurs:

- a. A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plan creates a reasonable likelihood of adverse regional impacts or other regional impacts not evaluated in the review by the Southwest Florida Regional Planning Council; or
- b. Expiration of the period of effectiveness of this Development Order.

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

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

10. The established buildout date under this Development Order Amendment is May 4, 2008, and the termination date is May 4, 2010, unless an extension is granted by the Board. No permits for development will be issued by the County subsequent to the termination date, or expiration date, unless the conditions set forth in F.S. §380.06(15)(g) are applicable.

11. An extension of the buildout or termination date 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. Future requests to extend time will be evaluated cumulatively with past requests in accordance with F.S. §380.06(19). For the purpose of calculating when a buildout date has been exceeded, the time is tolled during the pendency of administrative and judicial proceedings relating to development permits.

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

13. The development will not be subject to down-zoning, or intensity reduction, for five years following the date this Development Order Amendment is approved, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order amendment including, but not limited to such factors as a finding that the Development Order Amendment 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.

14. The Developer, or its successor in title to the undeveloped portion of the subject property, must continue to submit a biennial report 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 must describe the state of development and compliance as of the date of submission, and must further be consistent with the rules of the State land planning agency. The biennial report must include information required by Florida Statutes §380.06.

The first monitoring report must 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 Amendment, and further reporting must be submitted not later than May 1st of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by §380.06(18) Florida Statutes, and the developer must so inform any

120B4.176

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

successor in title to any undeveloped portion of the real property covered by this Development Order. This may not be construed to require reporting from individual tenants.

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

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

THE MOTION TO ADOPT this Resolution approving and adopting this Development Order Amendment was offered by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_ and upon poll of the members present, the vote was as follows:

|                      |       |
|----------------------|-------|
| John E. Manning      | _____ |
| Cecil L. Pendergrass | _____ |
| Larry Kiker          | _____ |
| Brian Hamman         | _____ |
| Frank Mann           | _____ |

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:  
Charlie Green, Clerk

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

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

Deputy Clerk

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

Chairman

APPROVED AS TO FORM

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

County Attorney's Office

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MAY 27 2014

COMMUNITY DEVELOPMENT

DRI 2014-00001

Attachments:

Exhibit A - Legal Description

Exhibit B - Map H

Exhibit C - Phasing Schedule

Exhibit D - Sketch of Preservation Line Map - dated 10-13-93

Exhibit E -Overall Marina Plan - dated October 5, 1993

Exhibit F - Sketch of Phase 4 Preservation Area dated 5-1-2002

Exhibit G- Boardwalk and Observation Deck/Mangrove Trimming Plan  
2 page exhibit prepared by Dexter Bender & Associated dated  
6-26-2002 and 6-19-2002 respectively

Exhibit H - Rip Rap detail

120B4.176

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MAY 27 2014

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DRI 2014-00001