ADD2014-00218 Lee County ePlan

STAFF REPORT
FROM
DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF ENVIRONMENTAL SCIENCES

Date: **January 12, 2015**

To: **Chahram Badamtchian, Senior Planner**

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Project: **Villa Magnifica**
Case: **ADD2014-00218**
STRAP: **17-46-25-00-00002.0070**

The Division of Environmental Sciences (ES) staff has reviewed the proposed amendment to Villa Magnifica (aka The Preserve at San Carlos Park aka Porro) Residential Planned Development (RPD) and offer the following analysis and recommendations.

PROJECT SITE:
The project is located on the east side of S. Tamiami Trl, approximately 0.2 miles south of Constitution Blvd. The project site is approximately 9.28 acres in size. The site is zoned RPD with a Future Land Use Category of Urban Community. The site is bisected by Mullock creek.

PROJECT HISTORY:
This site was originally zoned RPD in 2006 per resolution Z-06-091. This rezoning allowed for the development of 72 multi-family units (which included 17 bonus density units), infrastructure, and associated amenities. Subsequently, the site was amended per ADD2007-00132 to modify the MCP by eliminating one multi-family building and relocating the amenity center. Note that the density was not reduced as part of this request, the buildings were condensed to incorporate all of the proposed units into three buildings. Following the 2007 amendment the site was amended again per ADD2012-00004 to allow a deviation from Land Development Code (LDC) 10-416(d)(9) to allow a 25' wide natural waterway buffer, reduce the number of units by eliminating 17 bonus density units, and revise the site plan to remove the playground/park area in the northeast portion of the site. Note that ADD2007-00132 was superseded by ADD2012-00004 and all necessary conditions were brought forward into this ADD. It was then modified again in ADD2012-00101 to incorporate a overflow trench along Mullock creek to address Federal Emergency Management Agency (FEMA) floodway issues. In an effort to codify all the conditions and modifications these past ADD approvals are being replaced by the current proposed application and all modified conditions are being brought forward. In an effort to

clarify the history of the past ADD projects ES staff's analysis from ADD2012-00004 and ADD2012-000101 are being incorporated into this staff report.

ADD2012-00004:

NATURAL WATERWAY BUFFER:

The site is bisected by Mullock Creek. The creek runs through the site in the northeast corner and leaves a 1.10 acre area on the east side of the creek. Per Z-06-091, the 1.10 acre area on the east side of the creek was to be impacted to allow for an amenity center. In the 2007 amendment the amenity center was relocated to the west side of the creek and this area was slated to be a park/playground area which maintained as many of the existing trees as possible. Originally, the approved MCP demonstrated a 25' wide natural waterway buffer along both sides of Mullock creek, which was compliant at that time with Land Development Code (LDC) 10-416(d)(9).

However, in 2009 the LDC was amended to require a 50' wide natural water buffer resulting in the request by the applicant to have a deviation (Deviation #2) to allow a minimum 25' width along the west side of the creek. As justification for this request the applicant has agreed to place the 1.10 acre indigenous area on the east side of the creek into preservation and remove any proposed development in this area. This will provide the 50' natural waterway buffer on the east side of the creek. In addition, this will result in an increase of the indigenous open space from the original 1.87 acres with credits to 3.42 acres with credits.

Given the added indigenous preservation the applicant is proposing, this project exceeds the requirements of The Lee County Comprehensive Plan and LDC and staff recommends approval with conditions (see codified conditions below) of the deviation request.

The following Lee County Comprehensive Plan Goals, Objectives and Policies support ES staff analysis and recommended conditions:

Lee Plan Goal 77 To require new development to provide adequate open space for improved aesthetic appearance, visual relief, environmental quality, preservation of existing native trees and plant communities, and the planting of required vegetation.

Objective 77.1 Development regulations will continue to require that new residential developments provide sufficient open space to meet the needs of their residents.

Objective 77.3 New developments must use innovative open space design to preserve existing native vegetation, provide visual relief, and buffer adjacent uses and proposed/existing right-of-ways. This objective and subsequent policies are to be implemented through the zoning process.

Policy 77.3.1 Any new development with existing indigenous vegetation is encouraged to provide half of the required open space as existing native plant communities. Any new development with existing native trees without associated native groundcover or understory is encouraged to provide half of the required open space with areas containing existing native trees. The planting of native shrubs species within native tree protection areas is encouraged.

BUFFERS:
Per Z-06-091 condition #6 an enhanced buffer was required along the east side of the creek along the north and east property lines. This was required due to concerns of the adjacent single family homeowners that the proposed amenity center would generate noise that would be incompatible with their neighborhood. The enhancement included a two foot high berm and a six foot high black chain link fence along with required plantings. Now that this area is designated as an indigenous preserve with no proposed development the enhancements are no longer necessary and if they were to be installed would actually impact the indigenous vegetation. Therefore, ES staff is recommending that the condition be modified (see codified conditions below) to remove the requirement for the chain link fence and berm and to allow the existing vegetation to meet the buffer landscaping requirements.

The following Lee County Comprehensive Plan Goals, Objectives and Policies support ES staff analysis and recommended conditions:
Policy 5.1.5: Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.

ADD2012-00101:
INDIGENOUS PRESERVATION:
Per LDC Section 10-415(b)(1)(a) large residential developments, with existing indigenous native vegetation communities must provide 50 percent of their open space percentage through the onsite preservation of existing native vegetative communities. Therefore, this site must provide a minimum of 1.86 acres (3.71/0.5=1.86) of indigenous preservation. The site is bisected by Mullock Creek. The creek runs through the site in the northeast corner and leaves a 1.10 acre area on the east side of the creek. Per Z-06-091, the 1.10 acre area on the east side of the creek was to be impacted to allow for an amenity center and an indigenous preserve on the west side of the creek closer to S. Tamiami Trl. In the 2007 amendment the amenity center was relocated to the west side of the creek and this area was slated to be a park/playground area which maintained as many of the existing trees as possible. Per ADD2012-00004 the playground area was removed from the east side of the creek and this area was depicted as indigenous preserve above the LDC minimum requirements for indigenous open space resulting in 3.42 acres of preserve with credits.

The site is located within a FEMA floodway and per regulations fill within a floodway is not permitted. To address the issue the applicant has two options; they may request through FEMA a revision to the floodway map to reduce or remove the floodway from the property, or they may

apply for a No-Rise certification through Lee County which demonstrates that the proposed development will cause no rise in the water levels in the area. The applicant has opted for the No-Rise certification and through extensive modeling it was determined that by constructing a "overflow" trench on the east side of Mullock creek the added fill on the site would cause no rise to the water levels in the floodway. This overflow trench is a widening of the creek to the east. It will consist of a 20' wide flat shelf followed by a 15' wide 3:1 slope leading up to the indigenous preserve area on the east side of the creek (see ES Staff exhibit 1 cross section K-K). The applicant has stated that the trench will be constructed either by using an excavator with a long arm from the west bank of the creek outside of the 25' natural waterway buffer. Or, via the existing 75' wide drainage right of way which is part of the port San Carlos Unit 1 Plat. ES staff is recommending a condition that will not allow any impacts to the indigenous preserves or the natural waterway buffer to allow for construction of the trench.

East of the trench will then consist of 0.81 acres of indigenous preserve which contains the required 50' wide natural waterway buffer per LDC10-416(d)(9). This will result in 2.91 acres (w/credits) of total indigenous preserve area for the project site which exceeds the minimum required by the LDC. The trench was also designed to maintain 15' of indigenous preservation on both ends to meet the buffering requirements in these areas. Additionally, the applicant has agreed to plant the 20' wide flat shelf and the 15' wide slope with native plantings. This will promote green infrastructure, help stabilize the bank, and allow for natural filtration of sheet flow into the creek. ES staff is recommending a condition which requires the planting of this area consist of native trees and wetland plants placed on the flat shelf and native herbaceous grasses installed on the slope.

Given the indigenous preservation and the plantings the applicant is proposing, this project exceeds the requirements of The Lee County Comprehensive Plan and LDC and staff recommends approval with conditions (see codified conditions below).

The following Lee County Comprehensive Plan Goals, Objectives and Policies support ES staff analysis and recommended conditions:

Policy 60.5.1: The County encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention/detention lakes with enlarged littoral zones, preserved or restored wetlands and meandering flow-ways.

Goal 77: To require new development to provide adequate open space for improved aesthetic appearance, visual relief, environmental quality, preservation of existing native trees and plant communities, and the planting of required vegetation.

Objective 77.1: Development regulations will continue to require that new residential developments provide sufficient open space to meet the needs of their residents.

Objective 77.3: New developments must use innovative open space design to preserve existing native vegetation, provide visual relief, and buffer adjacent uses and proposed/existing right-of-ways. This objective and subsequent policies are to be implemented through the zoning process.

Policy 77.3.1: Any new development with existing indigenous vegetation is encouraged to provide half of the required open space as existing native plant communities. Any new development with existing native trees without associated native groundcover or understory is encouraged to provide half of the required open space with areas containing existing native trees. The planting of native shrubs species within native tree protection areas is encouraged.

ADD2014-00218 PROJECT DESCRIPTION:
This application is proposing to revise the site plan to change the unit types from a condo development to townhomes. This proposed revision will result in a change to the overall indigenous preservation area provided on the site (see discussion below). This ADD will supersede all previous ADD actions. All necessary conditions will be brought forward (see below).

INDIGENOUS PRESERVATION:
Per LDC Section 10-415(b)(1)(a) large residential developments, with existing indigenous native vegetation communities must provide 50 percent of their open space percentage through the onsite preservation of existing native vegetative communities. Therefore, this site must provide a minimum of 1.86 acres (3.71/0.5=1.86) of indigenous preservation. The site is bisected by Mullock Creek. The creek runs through the site in the northeast corner and leaves a 1.10 acre area on the east side of the creek. Per Z-06-091, the 1.10 acre area on the east side of the creek was to be impacted to allow for an amenity center and an indigenous preserve on the west side of the creek closer to S. Tamiami Trl. In the 2007 amendment the amenity center was relocated to the west side of the creek and this area was slated to be a park/playground area which maintained as many of the existing trees as possible. Per ADD2012-00004 the playground area was removed from the east side of the creek and this area was depicted as indigenous preserve above the LDC minimum requirements for indigenous open space resulting in 3.42 acres of preserve with credits. The site was then again amended per ADD2012-00101 to incorporate an overflow trench to address FEMA floodway issues. This resulted in 2.91 acres of preserve with credits being shown for the project still in excess of the original 1.86 acres required by Z-06-091 and the LDC.

The current proposed MCP impacts a portion of the indigenous preserve located adjacent to US 41. To incorporate the new unit types and the new site design this preserve area is being reduced from 1.44 acres to 1.10 acres (a 0.34 acre reduction). This will result in 2.46 acres of indigenous preserve with credits being provided. This still exceeds the original 1.86 acres required by Z-06-091 and the LDC. Given the indigenous preservation and the plantings the applicant is proposing, this project exceeds the requirements of The Lee County Comprehensive Plan and LDC and staff recommends approval with conditions.

The following Lee County Comprehensive Plan Goals, Objectives and Policies support ES staff analysis and recommended conditions:
Policy 60.5.1: The County encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to,

filtration marshes, grassed swales planted with native vegetation, retention/detention lakes with enlarged littoral zones, preserved or restored wetlands and meandering flow-ways.
Goal 77: To require new development to provide adequate open space for improved aesthetic appearance, visual relief, environmental quality, preservation of existing native trees and plant communities, and the planting of required vegetation.
Objective 77.1: Development regulations will continue to require that new residential developments provide sufficient open space to meet the needs of their residents.
Objective 77.3: New developments must use innovative open space design to preserve existing native vegetation, provide visual relief, and buffer adjacent uses and proposed/existing right-of-ways. This objective and subsequent policies are to be implemented through the zoning process.
Policy 77.3.1: Any new development with existing indigenous vegetation is encouraged to provide half of the required open space as existing native plant communities. Any new development with existing native trees without associated native groundcover or understory is encouraged to provide half of the required open space with areas containing existing native trees. The planting of native shrubs species within native tree protection areas is encouraged.

Conditions:
The following is a codification of all ADD conditions which are being brought forward and any modified conditions from the original zoning.

Condition #2 of ADD2012-00101 is to be brought forward with this application:
The overflow trench is a widening of the creek to the east. It will consist of a 20' wide flat shelf followed by a 15' wide 3:1 slope leading up to the indigenous preserve area on the east side of the creek as depicted on attached Exhibit "C".

Condition #3 of ADD2012-00101 is to be brought forward with this application:
As part of the local development order approval, the development order plans must demonstrate the planting of the "overflow" trench on the east side of Mullock creek to consist of the following:

- ***The 20' wide flat shelf must be planted with native wetland canopy trees planted 10' on center and leather fern (Acrostichum danaeifolium) planted 5' on center. The canopy trees must be 10' tall, 2" caliper, 4' spread at time of planting and the leather fern must be a minimum 3 gallon container size 24" tall at time of planting.***
- ***The 15' wide slope must be planted with native herbaceous grasses planted 3' on center. The grasses must be a minimum 3 gallon container size 24" tall at time of planting.***
- ***This planted area must be included in the indigenous management plan for the overall site.***

Condition #4 of ADD2012-00101 is to be brought forward with this application:
During construction of the "overflow" trench no impacts may occur to the indigenous preserve areas or the natural waterway buffer on either side of the creek. Prior to issuance of

the final vegetation removal permit an onsite meeting must be held with Lee Count Environmental Sciences staff to discuss the best option for constructing the trench.

Note this revised condition replaces condition #5 of ADD2012-00101 and Z-06-091:
As part of the local development order approval, the development order plans must delineate a minimum of ~~2.91~~ 2.46 acres with credits of indigenous preservation consistent with the MCP ~~stamped "received" September 24, 2012~~.

Condition #6 of Z-06-091 as amended by ADD2012-00101 is to be brought forward with this application:
As part of the local development order approval, the development order plans must delineate the preservation of 0.81 acres east of Mullock creek. This area is to remain in its natural vegetative state to act as a buffer to the surrounding uses. Native vegetation in this area may not be trimmed and an indigenous management plan must be provided for this area at time of local development order.

Condition #3 of ADD2012-00004 is to be brought forward with this application:
Prior to development order approval, the development order plans must delineate a minimum five (5) foot wide planted strip along the north property line between the indigenous preserve and twenty-five (25) foot waterway buffer. The plantings must be native and include four (4) trees per one hundred (100) linear feet meeting overhead powerline height requirements and eighteen (18) shrubs per 100 linear feet meeting Land Development Code (LDC) Section 10-420(d) plant material standards.

Condition #4 of ADD2012-00004 is to be brought forward with this application:

The 20 foot wide maintenance easement along Mullock Creek as required by Land Development Code 10-328(a) may overlap the required natural waterway buffer provided that:

a. *vegetation removal is limited to the routine removal of exotics and downed vegetative debris only; and*
b. *removal of native vegetation within the 20 foot easement must be minimized and limited to when necessary for vehicle access for waterway maintenance purposes only; and*
c. *additional vegetation planted within the 20 foot maintenance easement to meet any enhancements requirements must be reviewed and approved by Environmental Sciences and Natural Resource staff*

Condition #3 of Z-06-091 as amended by ADD2012-00004 (condition #7) is to be brought forward with this application:

a. *Prior to local development order approval, a detailed gopher tortoise management plan must be submitted for the Division of Environmental Sciences Staff review and approval. The management plan must at a minimum include:*
    a. *The type of gopher tortoise permit to be obtained from Florida Fish and*

ADD2014-00218 Lee County ePlan

Wildlife Conservation Commission; and,

b. The type of permanent physical barrier to be installed between the preserve and the entry road and preserve and multi-family building, to deter gopher tortoises from entering the road and parking lot. The permanent barrier may be a fence, native vegetation, rock wall, or a combination of these. The details of permanent barrier must also be shown on the development order plans; and,

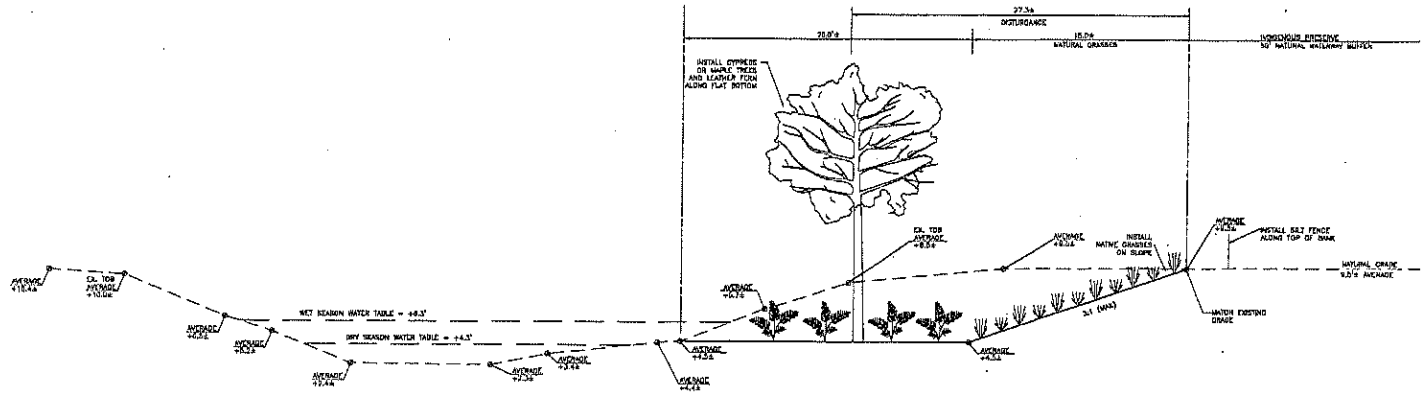
c. Long term management activities that are necessary to maintain the preserves as gopher tortoise habitat.

b. Prior to local development order approval, the development order plans must include the details for signage to be placed on either side of the creek that indicates alligators may be present, and do not feed or harass alligators. A minimum of two signs must be installed. A pamphlet regarding living with alligators must be submitted for review and approval by the Division of Environmental Sciences Staff. The pamphlet must be given to the residents to help prevent injury to people or alligators.

Condition #4 of Z-06-091 is to be brought forward with this application:
Prior to local development order approval, the landscape plans must delineate a minimum 50 percent open space.

Conditions #9 and #10 of Z-06-091 are no longer necessary and can be removed. These conditions addressed the area east of Mullock creek and impacts due to the proposed amenity center and boardwalk over Mullock creek. This area is now being preserved in its indigenous state and no boardwalk is proposed therefore these conditions no longer apply. Overall the site is still providing open space an indigenous open space that is in excess of the original amounts approved through the public hearing process and required by the LDC. Per LDC 34-380(b) administrative deviations may be approved as long as the open space is not reduced by more than 10% and preserve areas or open space are not reduced below LDC code required. In this case both the indigenous preserve area and open space will exceed the amounts approved on the original Z-06-091 approval and will not reduce amounts below what is required by the LDC.

ES Staff Exhibit 1



CROSS SECTION K – K OF MULLOCK CREEK
N.T.S.

APPROVED
Plan
Subject to Case # ADD2012-00101
Date: 10/18/12

RECEIVED
SEP 14 2012
COMMUNITY DEVELOPMENT

EXHIBIT C

ADD 2012-00101

DATE	
DESIGNED BY	CJB
DRAWN BY	JCH/LSM
CHECKED BY	TDM
APPROVED BY	TDM

NO.	DATE	REVISIONS
1		

DRAWING NAME: C:\Projects\Preserve\Drawings\CAD\CS.dwg

THE PRESERVE AT SAN CARLOS PARK
CROSS-SECTION OF MULLOCK CREEK

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SHEET 1 of 1

Tina Meek, P.E.
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DATE

SCALE: N.T.S.

ADD2014-00218 Lee County ePlan