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LETTER OF TRANSMITTAL

TO:
Anthony R. Rodriguez, AICP
Principal Planner
Lee County Community Development Dept.
1500 Monroe Street
Fort Myers, FL 33902

DCI 2018-00018

DATE: August 3, 2018

MDA PROJECT NO.: ~~18013~~ 17103

ATTENTION: Anthony R. Rodriguez, AICP

RE: Portico Planned Development Amendment DCI2018-00018 - 1st Insufficiency Response

We are sending you ☒ Attached ☐ Under separate cover VIA _____ the following items:

Copies	Date	No.	Description
3	2018/08/03	1	Insufficiency Response Letter
3	2018/08/02	2	Proposed Revisions to Zoning Resolution
3	2018/08/02	3	Schedule of Deviations
3	2018/08/02	4	Property Development Regulations
3	2018/08/02	5	Schedule of Uses
3	2005-09-14	6	ERP Permit No. 36-05388-P
3	2018/07/06	7	TIS
3	2018/07/24	8	Boundary Survey
3	2018/07/24	9	Sketch & Legal Description
6	2018/07/18	10	Aerial Exhibit 24x36 & 11x17
6	2018/08/03	11	Master Concept plan 24x36 & 11x17

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These are transmitted as checked below:

☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☐ For your use Approved as noted ☐ Submit _____ copies for distribution
☐ As requested Returned for corrections ☐ Return _____ corrected prints
☐ For review and comment
☐ For bids due _____ Prints returned after loan to M-DA

REMARKS: Please see the attached. Should you have any questions or concerns please contact me. Thank you.

COPY TO: _____

SIGNED: C Woodworth
Candace E. Woodworth
Assistant Planner

MORRIS DEPEW
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August 3, 2018

Anthony R. Rodriguez, AICP
Principal Planner
Lee County Community Development Dept.
1500 Monroe Street
Fort Myers, FL 33902

RE: Portico Planned Development Amendment
DCI2018-00018 - 1st Insufficiency Response

DCI 2018-00018

Dear Mr. Rodriguez,

The purpose of this letter is to provide a response to the Lee County Community Development Department's review comments dated June 26, 2018 and July 9, 2018, for the above referenced Planned Development Amendment Application.

As discussed on June 16th the applicant is aware of the request for a revised Title Certification and will provide a revised certification encompassing the entire 589 acres with the 2nd Insufficiency Response to ensure consistency with the on-going lot sales.

We appreciate the coordination and assistance with Staff on matters related to this application and welcome additional calls and emails that will further help us to address all the concerns in the most efficient manner to the extent this request can be approved.

Comment/Condition:

1. Master Concept Plan (MCP)

    a. Section 34-373(a)(6) of the LDC requires the Master Concept Plans (MCPs) to submitted in both 11-inch x 17-inch (tabloid) and 24-inch by 36-inch (Architectural D) sizes. Please provide a tabloid-size MCP as required by this section of the LDC.

    Response: Please see the attached revised Master Concept Plan, with three (3) of each 11-inch x 17-inch and 24-inch x 36-inch copies.

    b. Section 34-373(a)(6)a. of the LDC requires MCPs to depict easements with OR book references for recorded easements. Please revise the MCP to depict recorded easements as depicted on the Portico, Phase I plat recorded in Instrument# 200600411756.

    Response: Please see the attached revised Master Concept Plan depicting all recorded easements as depicted on the Portico Phase 1 Plat and the Recorded Instrument #2006000411756.

    c. Please revise the MCP to provide legend items for all hatching and line work depicted on the MCP, including wetland areas, lakes, amenity site hatching, etc.

Response: Please see the attached revised Master Concept Plan with the provided legend annotating all hatching and line work.

d. The MCP appears to depict a Lake "L" on sheets X-101 and X-104 of the MCP; however, it appears that this area is not proposed to be a lake. Please revise the MCP accordingly.

Response: Please see the attached revised Master Concept Plan, the "L" symbol has been removed from sheets X-101 and X-104.

e. Please revise sheet X-106 of the MCP (Open Space Plan) as follows:

i. Eliminate the use of color line work and utilize black and white line work and cross hatching in lieu of color line work.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 utilizing black line work.

ii. Utilize hatching to differentiate indigenous open space from general open space areas.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 which utilizes separate hatching for each type of open space.

iii. Revise the open space table to show all indigenous areas (both upland and wetland) together as indigenous open space.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 with a revised open space table.

iv. Provide annotations that key the depicted open space areas to the open space table.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 with a revised open space table.

v. Revise the open space table to show the Amenity Area in the same line as Lakes and other Open Space.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 with a revised open space table.

vi. Label the Wetland "N" creation area on the Open Space Plan and provide the restoration plan for this area.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 with a revised open space table.

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vii. Provide a cross section showing the transition from the proposed lake to the wetland "N" creation area. Please describe whether there will be any drawdown pool areas of varied depths to support wading birds and provide water quality.

Response: Please see the attached revised Master Concept Plan, Sheet X-106 demonstrating the open space and Sheet X-108 demonstrating the requested cross sections.

The materials provided as part of the approved ERP, which established Wetland N Creation Area, demonstrate that this area is freshwater marsh and designed to be 2 feet below the water control elevation. Generally speaking, freshwater marshes are periodically or continually flooded and known to support wading birds. Wetland N and the surrounding lake is incorporated into the water management system as permitted by the Water Management District and presumed to provide water quality as part of the overall system. A copy of ERP 36-05388-P is attached for reference.

f. Please revise the MCP to remove the aerial exhibit. The aerial exhibit may be submitted as a separate exhibit.

Response: Please see the attached revised Aerial Exhibit submitted as a separate Exhibit from the revised Master Concept Plan.

g. Sheet X-102 of the MCP indicates that proposed Deviation 3 (Deviation 4 of Resolution Z-04-080) applies to the Amenity Area depicted on the MCP. The conditions of this Deviation limit the approval to Lakes A, B, and D as depicted on the MCP approved by Z-04-080 and as shown on the proposed MCP. Please revise Sheet X-102 to eliminate the deviation annotation from the amenity area or revise the deviation request accordingly.

Response: Please see the attached revised Master Concept Plan, Sheet X-102 to only locate Deviation 3 in Lakes A, B, D.

h. Please revise Sheet X-101 of the MCP to depict the second emergency access referenced in the request narrative and depicted on Sheet X-105 of the MCP.

Response: Please see the attached revised Master Concept Plan, Sheet X-105, depicting the second emergency access as described in the request narrative.

i. Please revise the MCP to depict the 25-foot right-of-way dedication along Buckingham Road as required by Condition 20 of Resolution Z-04-080 and reference the Public Records Instrument number as required by Section 34- 373(a)(6)a of the LDC.

Response: Please see the attached revised Master Concept Plan notating the 25-foot right-of-way easement that was dedicated to Lee County. The Dedication was recorded under Portico Phase 1 Plat Instrument number 2006000411756 on October 30, 2006.

j. Please revise the MCP to depict the area proposed for consumption on premises (COP) listed in the Schedule of Uses.

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Response: Please see the attached revised Master Concept Plan, Sheet X-108 which includes a graphic depiction of the proposed amenity with the proposed location of outdoor seating for consumption on premises noted and a dimension demonstrating the setback from the property boundary. The applicant notes the amenity center is proximate to vacant land to the South

k. Staff recommends revising the MCP to include a typical lot plan for residential. lots abutting lakes.

Response: Please see the attached revised Master Concept Plan, Sheet X-107 depicting revised lot typicals for lots abutting lakes.

l. Please revise the section labels depicted on Sheets X-107 and X-108 of the MCP. The section labels run from A through J on Sheet X-107 and restart at A on Sheet X-108. This may create confusion since section labels A through D are referenced twice.

Response: Please see the attached revised Master Concept Plan, Sheets X-107 and X-108 with revised section labels.

m. Please review the Typical Primary Corridor Cross Section (Cross Section F on Sheet X-107 of the MCP) and revise to provide pedestrian facilities in accordance with Section 10-256 of the LDC. It appears that pedestrian facilities are available along the constructed portion of this roadway.

Response: Please see the attached revised Master Concept Plan, Sheet X-107, depicting the revised Typical Primary Corridor Cross Section. The Cross Section has been revised to include a note that a 4ft pedestrian facility consistent with the existing constructed spine road and pedestrian facility in Phase 1 is required. Due to the changing location of the existing sidewalk compared to travel lanes and to maintain flexibility with the location during the redevelopment after zoning approval, the applicant has addressed this item by including a note below the cross section. Additionally, the deviation request to maintain the existing approved cross sections has been updated to reflect the pedestrian facility.

n. The Typical Village Entry, Typical Village Road, and Typical Townhouse Road Cross Sections (Cross Sections G through I on Sheet X-107 of the MCP) should be revised to depict a 5-foot sidewalk in accordance with Section 10- 256(e)(2)h.5 of the LDC.

Response: The applicant notes this comment and requests staff to consider the following:

- **LDC Section 10-256(b)(2)c requires pedestrian facilities to be constructed within a private subdivision on one side of all streets internal to the development from intersection to intersection or cul-de-sac.**
- **The existing cross sections approved via Z-04-080 for the typical village entry and village road include sidewalks on <u>both</u> sides of the road.**
- **The existing approved cross sections include 4ft sidewalks and have been constructed within Phase 1 of the community.**

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The requested deviation to maintain the 4ft sidewalk would maintain previously approved enhancements to the planned development and will continue to protect the public's health safety and welfare.

For additional details please see the attach revised Master Concept Plan and Schedule of Deviations.

o. Please revise Cross Sections D and E (Typical Sections for Deviations 1 and 2) on Sheet X-107 of the MCP to depict the required lake maintenance easements.

Response: Cross Sections D and E, Typical Sections for Deviations 1 and 2 were intended to only apply to locations were lakes abut an external property boundary, not a residential lot, as described in the attached Schedule of Deviations. A Lake Maintenance Easement is not required in these locations due to the common area maintenance. As such the title of the cross section has been revised to demonstrate the common area location.

The applicant requests staff to review these cross sections while also reading Deviation 2 to understand the specific details the cross sections are meant to depict. It is the preference of the applicant to not "mix" the details from the deviation related to the lake bank slope with the external setback. Especially considering due to current regulations within the LDC there are now two deviations for the lake bank slopes.

p. The Deviation Typical Section for Deviation 2 (Cross Section E on Sheet X-107 of the MCP) must be revised to provide the specific information related to the location of the lake maintenance easement, the proposed slope above the control elevation, and the depth at which the slope is proposed to change from 4-to-1 to 2-to-1. Cross Section E also conflicts with the Lake Bank Slope Typical (Cross Section D on Sheet X-108). Please revise the MCP and narrative accordingly to clarify.

Response: As with the previous comment Deviation 2 and Cross Section E is only applicable to locations were lakes abut an external property boundary, not a residential lot, and to demonstrate the previously approved setback from the external property boundary – not lake construction. The cross section has been updated to include a note that all slope details are to be provided consistent with Cross Section O on Sheet X-108.

The applicant requests staff to review these cross sections while also reading Deviation 2 to understand the specific details the cross sections are meant to depict. It is the preference of the applicant to not "mix" the details from the deviation related to the lake bank slope with the external setback. Especially considering due to current regulations within the LDC there are now two deviations for the lake bank slopes.

q. The Pinch Point Plan View detail depicted on Sheet X-1087 of the MCP depicts an eight-foot-high perimeter wall and berm between the roadway and emergency access gate. Please revise this detail to clarify that the depicted berm and wall will not be constructed so as to impede access to the emergency access gate.

Response: The applicant notes this portion of the Subdivision and emergency access gate have already been constructed. Sheet X-107 of the Master Concept Plan has been revised

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to depict "Existing Pinch Point Plan View Detail" and the "Existing Pinch Point Section View Detail A-A". The Existing Pinch Point Plan View Detail has been updated to reflect the typical as provided in ADD2007-00084, which is consistent with the approvals provided for the River Hall Subdivision.

r. The Pinch Point Section View detail on Sheet X-108~~7~~ of the MCP depicts a five-foot-wide maintenance easement not shown on the Pinch Point Plan View detail. Please review and revise this detail as necessary to provide consistency between this detail and the Pinch Point Plan View detail.

Response: Please see Sheet X-107 of the revised Master Concept Plan depicting the revised detail "Existing Pinch Point Plan View Detail" and the "Existing Pinch Point Section View Detail A-A". The 5 ft Maintenance Easement is labeled in both details for clarity.

s. Please revise the Flow Splitter Configuration Plan View detail on Sheet X-108 of the MCP to provide road dimensions inside the traffic circle as consistent with the detail approved by Resolution Z-04-080.

Response: Please see the attached revised Master Concept Plan, Sheet X-108 depicting the dimensions inside the Flow Splitter Configuration, consistent with Resolution Z-04-080.

t. The Flow Splitter Configuration Plan View detail for the Two-Family Attached road configuration depicts lot widths of 55 feet, whereas the property development regulations permit a minimum lot width of 30 feet. Please revise this detail to depict the correct lot widths to illustrate the driveway locations in these areas.

Response: Please see the attached revised Master Concept Plan, Sheet X-108 depicting the Flow Splitter configuration detail for the Two-Family Attached lots. The widths have been revised to 30 ft to be consistent with the proposed Property Development Regulations Exhibit.

Comment/Condition:

2. Schedule of Uses and Property Development Regulations

a. Staff recommends that the schedule of uses be revised to include accessory uses and structures and recreation facilities, private, on-site in the schedule of uses for the Residential Amenities Tract.

Response: Please see the attached revised Schedule of Uses and Proposed Revisions to Zoning Resolution documents to include "Accessory Uses and Structures" in underline for the Residential Amenities Section. Please note that "Recreational Facilities, Private Onsite" was listed in both documents as submitted on June 1, 2018.

b. Please revise the schedule of uses to remove docks and fishing piers from the schedule of uses for the Residential Amenities tract. These uses are not listed in the Use Regulations Table in Section 34-934 of the LDC, and would be classified as accessory structures or private on-site recreation facilities pursuant to the LDC.

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Response: Please see the attached revised Schedule of Uses and Proposed Revisions to Zoning Resolution documents with "Docks and Fishing Piers" stricken for the Residential Amenities Section.

c. The property development regulations submitted with the request establishes a minimum lot width of 50 feet, a minimum lot depth of 90 feet, and a minimum lot area of 3,600 square feet for single-family lots abutting lakes. The minimum lot width and depth would necessitate a minimum lot size of 4,500 square feet. Please review these dimensional requirements accordingly.

Response: Please see the attached revised Property Development Regulations and Proposed Revisions to Zoning Resolution documents with the corrected square feet of 4,500 for Single-Family Lots abutting lakes in strikethrough and underline format.

d. Please revise the property development regulations to change the "Front Setback" column to "Street Setback" in accordance with the provisions of the Land Development Code.

Response: Please see the attached revised Property Development Regulations with the corrected Minimum "Street Setback" annotation in strikethrough and underline format.

e. The property development regulations exhibit submitted with the request eliminates the waterbody setbacks established by Resolution Z-04-080. Please clarify whether the waterbody setback requirements are proposed to be eliminated or carried forward from the aforementioned resolution.

Response: Please see the attached revised Property Development Regulations including the Waterbody Setbacks established by Resolution Z-04-080 and to be carried forward with the proposed Planned Development Amendment.

The applicant has proposed an additional Waterbody setback to reflect the changing conditions resulting from requested deviation 17 and 18 and address a conflict identified by Development Services Staff.

f. The property development regulations exhibit submitted with the request does not include the property development regulations for the amenity site established by Resolution Z-04-080. Please. clarify whether the property development regulations for the amenity site are proposed to be eliminated or carried forward from the aforementioned resolution.

Response: Please see the attached revised Property Development Regulations including the Clubhouse/Amenity Sites established by Resolution Z-04-080 and to be carried forward with the proposed Planned Development Amendment.

g. The property development regulations appear to reference a footnote with respect to maximum building height, but no footnote is provided. Please revise accordingly.

Response: Please see the attached revised Property Development Regulations with the footnote item removed from the building height column.

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h. The property development regulations establish a maximum building height of 45 feet for two-family attached dwellings and townhouses. The Proposed Revisions to Existing Conditions Exhibit indicates that a maximum height of 35 feet is proposed for two-family attached dwellings and a maximum height of 40 feet is proposed for townhouses. Please revise for consistency.

Response: Please see the attached revised Property Development Regulations and the Proposed Revisions to Zoning Resolutions documents, both refer to the requested maximum height of the two-family attached dwelling units and townhouses is 45 feet.

Comment/Condition:

3. Schedule of Deviations

a. Please note Development Services staff does not support the requested revisions to proposed Deviations 1 and 2. Development Services staff is concerned that the phrase "in substantial compliance" provides room for interpretation and can be misunderstood.

Response: The applicant notes staff's concerns and hopes a mutual agreement can be reached for acceptable language consistent with the intended outcome stated in the Schedule of Deviations and Justifications.

b. The proposed amendment to Deviation 5 (Deviation 7 of Resolution Z-04-080) seeks to permit Real Estate Sales Centers until the last lot of the development is sold. Please clarify how the sale of the last lot will be verified to ensure compliance with this condition. Please note that Development Services staff does not support the requested amendment to this deviation.

Response: Please see the attached Schedule of Deviations. Deviation 5 has been revised to request the Real Estate Sales Center to remain open until the last building permit is issued. This would provide a tracking mechanism for the County to ensure the Sales Center did not operate past the last building permit.

Please see the revised Schedule of Deviations for additional details.

c. Deviation 10 (Deviation 15 of Resolution Z-04-080) must be revised to reflect the method of measurement established in Section 10-285 of the LDC subsequent to the original zoning approval. The proposed amendment to the planned development requires relief from this current LDC provision. Therefore, the deviation request must be amended to reflect the required relief rather than retaining the previously approved deviation.

Response: Please see the attached revised Schedule of Deviations. Consistent with Staff's comments, deviation 10 has been amended and new language is being proposed to ask for relief from the current CH 10-285 Connection Separation distance language.

Please see the revised Schedule of Deviations for additional details.

d. The justification for Deviation 14 contains conflicting information with respect to the applicability of the deviation. The first sentence of the justification indicates that the deviation applies to the lake bank slopes throughout Phases 1, 2, and 3 of the development, while the

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final sentence of the deviation justification indicates that the deviation will memorialize the existing conditions of the constructed stormwater management lakes in Phases 1 and 2. Please revise and clarify the deviation request accordingly.

Response: Please see the revised Deviation 14 in strikethrough format. Deviation 14 is only intended to memorialize the existing conditions of Phase 1 and a small portion of Phase 2.

e. Deviation 16 is not required. According to the FLUCCS map submitted as part of the original application for rezoning, the subject parcel only has approximately 32.49 acres of indigenous area that meets the definition indigenous native vegetation in LDC Section 10-1. The remaining 35.59 acres of required indigenous open space must be added to the 68.09-acre open space requirement and may be created through landscaping, lakes, recreation areas, etc.

Response: Deviation 16 has been removed from the Schedule of Deviations.

f. Section 10-415(b)(1)(c) of the LDC requires a 20-foot setback for non-fire dependent preserves (uplands) and a 30-foot setback from fire dependent preserves (wetlands). Deviation 15 requests relief to allow the townhomes to provide 25-foot rear setback from fire dependent preserve areas and to provide a reduced setback from fire dependent and non-fire dependent preserves for platted lots in Phase 1-A. Please provide the following information in support of the deviation:

   i. Label the upland and wetland indigenous preserve areas on the MCP;

      Response: Please see the attached revised Master Concept Plan with the upland and wetland indigenous preserve area labeled on Sheet X-106.

   ii. Label the platted lots on the MCP and annotate the MCP to depict the reduced setback being requested for these lots; and

      Response: Please see the attached revised Master Concept Plan. Consistent with a phone conversation with County Staff a note has been added to the typical lot layout on Sheet X-107 rather than demonstrating the platted lots.

   iii. Provide verification from the Fire Marshal in support of the deviation.

      Response: The applicant has been in correspondence with the Fort Myers Shores Fire Protection and Rescue Service District's Fire Marshal. Upon receipt the Letter of No Objection will be provided to staff in a supplemental submittal.

g. Deviation 18 seeks relief to utilize 4-to-1 lake bank slopes instead of the 6-to-1 slopes required by Section 10-329(d)(4) of the LDC. The justification in support of the justification states that the planting will be in compliance with LDC 10-418 (2)c.1. Please confirm that the planted littoral shelf will be 20 feet in width and will be no greater than 2 feet below control elevation. Please be advised that staff does not support the requested deviation for unplatted areas of the subject property.

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Response: The applicant has added Deviation 18 (please note Deviation 16 was deleted from the previous submittal) to request a reduction of the Planted Littoral Shelf to 12 feet and include the location of shelf along the entire lake bank.

Additionally, the applicant has provided additional information regarding the proposed 4:1 slope as related to addressing erosion concerns and added notes to the proposed revised conditions, proposed property development regulations and the lot typicals and lake bank cross section on the Master Concept Plan to address a conflict identified by Development Services Staff. Please see the attached revised documents for additional details.

h. It appears that an additional deviation from Section 10-296(e)(2)e(5) to permit the proposed townhouse road cross section depicted on the Master Concept Notes of the MCP. Please revise the Schedule of Deviations to include this deviation as noted.

Response: Please see the attached revised Schedule of Deviations. Deviation 16 has been renumbered and edited to include the proposed townhouse road and requesting the memorialization of the existing Roadway Typical Sections approved by Z-04-080 and ADD2016-00184, some of which have also been built per the approved Development Order case number DOS2006-00231.

Comment/Condition:

4. Proposed Revisions to Conditions of Resolution Z-04-080

a. The proposed revision to Condition 10 (Condition 8 in the Proposed Revisions to Existing Conditions Exhibit) should be revised to limit consumption on premises to Food and Beverage Service, Limited associated with the Clubs, Clubhouse - Private use proposed to take place on the Residential Amenities tract. Please review the proposed revisions to this condition to ensure that this condition addresses the revised concept for the Residential Amenities tract as it relates to hours of operation, limitation on service to members and guests of the private club and providing outdoor areas for consumption on premises.

Response: The Applicant agrees with Staff's comments that Consumption on Premises should be limited to the Private Club through Food and Beverage Service within the Residential Amenity tract. A revision is proposed to Condition 8 and a typical has been added to Sheet X-108 on the Master Concept Plan for consideration. The applicant looks forward to working with staff to continue to refine this conditions in an appropriate manner should additional details be necessary.

b. Staff does not support the deletion of Conditions 13 and 14 of Resolution Z-04-080. These conditions must remain even if the buffers have been issued a Certificate of Completion because these conditions require enhanced buffers that exceed the buffer requirements established in the LDC.

Response: The applicant notes County Staff's comment. Please see the attached revised Proposed Revisions to Zoning Resolution document. The strikethrough has been removed from Condition 13 and Condition 14 of Resolution Z-04-080.

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c. Please review and verify the proposed revisions to Condition 12 of Resolution Z-04-080 (Condition 10 in the Proposed Revisions to Existing Conditions Exhibit) relative to open space acreages within the townhouse tract.

Response: Please see the revised Proposed Revisions to Zoning Resolution document. Per our conversations with Lee County Staff, this condition has been deleted. In its place is Sheet X-106 of the Master Concept Plan. The applicant notes staff will propose an additional condition for the larger open space plan now proposed.

d. Staff recommends that Condition 19 of Resolution Z-04-080 (Condition 13 in the Proposed Revisions to Existing Conditions Exhibit) remain.

Response: The applicant notes County Staff's comment. Please see the attached revised Proposed Revisions to Zoning Resolution document. The strikethrough has been removed from Condition 19 of Resolution Z-04-080 (Condition 13 in the Proposed Revisions to Existing Conditions Exhibit).

Comment/Condition:

5. Survey and Legal Description
   a. The boundary survey submitted with the application must be based upon a title certification document in accordance with Section 34-202(a)(3) of the LDC. Please submit a title certification document that meets the criteria set forth in this LDC section.

Response: Consistent with a conversation held with Lee County Staff on July 16, 2018 the Title Certification will be updated and provided at the time the applicant responds to the second Insufficiency request. At that time an updated Boundary Survey will also be provided.

Comment/Condition:

6. Traffic Impact Statement
   a. The TIS must contain a general description of each type of use proposed, the units of development and the Land Use Code for each type of use utilized in the trip generation. The site design parameters that are stated in the TIS do not appear to correspond to the parameters that are stated and/or depicted in the non-TIS submittals. The conditions for the case appear to indicate that 1,600 single family dwelling units may be permitted. Please clarify in the conditions the maximum number of single family dwelling units that may be permitted with the case, and review and revise the TIS if needed.

Response: Please see the attached responses from David Plummer and Associates. The applicant notes for clarification the following definitions from LDC Section 34-2:

Single-family residence **means a single, freestanding, conventional building designed for one dwelling unit and which could be used for occupancy by one family.**
Two-family **attached means a single, freestanding, conventional building designed as two dwelling units attached by a common wall or roof, but wherein each unit is located on separate lot under separate ownership.**
Townhouse **means a group of three or more dwelling units attached to each other by a common wall or roof wherein each unit has direct exterior access and no unit is located above one another...**

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By virtue of these definitions, the project narratives refer to 162 multi-family which is meant to imply the Townhomes listed in the schedule of uses and on the Master Concept Plan and 1,438 single-family units which is meant to imply either a single family residence or two family attached as referenced in the Schedule of Uses.

b. The TIS must contain 100th highest hour traffic for the current year and for the year following the year in which the project is expected to be completed. At least one of the raw traffic counts appears incorrect (see northbound left-turning trip described on the 2/6/2018 raw counts at the intersection of Buckingham Road and Portico Boulevard). Please explain if this trip was recorded in error, if data is ascribed to the correct location, etc., and review and revise the TIS accordingly.

Response: Please see the attached responses from David Plummer and Associates

c. The distribution of traffic must be reasonably distributed to the project entrances. A graphical depiction of all turning movements at each of the project entrances/access points must be provided. The project traffic distribution on at least one link described in the TIS appears low. See trips assigned to Buckingham Road south of the subject site and to Orange River Boulevard as compared to the prior zoning TIS and existing traffic volumes in proximity to the site. Please review and revise the TIS accordingly to, at a minimum, include a brief discussion as to how the assumed distribution was derived.

Response: Please see the attached responses from David Plummer and Associates.

d. The TIS must contain an analysis of the Level of Service for each of the project's access points and all intersections within one-quarter mile of the project. The analysis must follow the methods established in the most current edition of the Highway Capacity Manual for either signalized or unsignalized intersections. The TIS does not appear to contain a LOS analysis for each of the project's access points during the AM peak hour. Please review and revise the TIS accordingly.

Response: Please see the attached responses from David Plummer and Associates.

e. The TIS does not appear to contain a LOS analysis for the intersections reviewed during the AM peak hour. Please review and revise the TIS accordingly.

Response: Please see the attached responses from David Plummer and Associates.

f. Please include the traffic analysis methodology meeting information for the comprehensive plan amendment and related zoning case in the TIS appendix.

Response: Please see the attached responses from David Plummer and Associates.

g. The TIS LOS analysis for collector/arterial roadways does not appear to reference the most current adopted (non-draft) FOOT Generalized Peak Hour Volumes table for LOS determination. Please review and revise the TIS accordingly.

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Response: Please see the attached responses from David Plummer and Associates.

Comment/Condition:

7. Other
    a. The subject property is located in the Caloosahatchee Shores and Buckingham Planning Communities as established by the Lee Plan. The Lee Plan requires owners or agents requesting zoning actions in these planning communities to hold an advertised public information session to provide an overview of the request and to provide an opportunity for public comment. The Lee Plan also requires the submission of a meeting summary document describing the date, time, and location of the meeting and summarizing the comments received over the course of the meeting prior to a finding of sufficiency. Please provide the required meeting summary documents for each public information session.

    Response: The applicant has coordinated with the Caloosahatchee Shores and Buckingham Planning Communities and has scheduled the required public informational meetings. A meeting will be held on August 13th within the Caloosahatchee Shores Community and advertisements sent to the News Press. Also, a meeting will be held on August 14th within the Buckingham Community and advertisements sent to the NewsPress. Both the Buckingham Planning Community and Caloosahatchee Shores Planning Community have been notified of the meeting dates and times. The required summary and meeting details will be provided to staff in a supplemental submittal after August 14th, when both meetings have been completed.

Comment/Condition:

1. The legal description within the title certification contains less and except language that is not consistent with the sketch and legal description and boundary survey that has been submitted. Please review and revise the title certification to include a legal description consistent with the sketch and legal description and boundary survey.

    Response: Consistent with a conversation held with Lee County Staff on July 16, 2018 the Title Certification will be updated and provided at the time the applicant responds to the second Insufficiency request. At that time an updated Boundary Survey will also be provided.

I believe that the responses provide adequate detail to address Lee County Staff's comments. Should additional information be deemed necessary, please do not hesitate to call 239-337-3993 for any additional information or questions.

Sincerely,
MORRIS-DEPEW ASSOCIATES, INC.

Tina M. Ekblad

Tina M. Ekblad, MPA, AICP, LEED AP
Partner – Planning Director

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Cc: Barry Ernst – WCI Communities, LLC

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Neale Montgomery – Pavese Law Firm

Enclosures:
Revised Master Concept Plan
Approved ERP 36-05388-P
Revised Schedule of Uses
Revised Property Development Regulations
Revised Proposed Zoning Conditions
Revised Schedule of Deviations
Revised Boundary Survey and Legal Description and Sketch
Transportation Response from David Plummer and Associates

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SECTION A. REQUEST

The applicant filed a request to rezone a 589± acre parcel from AG-2 to RPD, to allow ~~1,058~~ 1,600 ~~single-family and~~ ~~120~~ ~~townhouse units~~ ~~(1,178 total~~ dwelling units~~)~~.

The proposed maximum building heights are ~~two stories/~~35 feet for single-family and single-family abutting lakes, ~~three stories/~~45 feet for two-family attached, two-family abutting lakes, and townhouses, and ~~two stories/~~50 feet for a clubhouse/amenity site. No development blasting is requested. The property is located in the Suburban, Sub-Outlying Suburban, Outlying Suburban, and Wetlands Future Land Use Categor~~y~~ies and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

1. The development of this project must be consistent with the __page Master Concept Plan entitled MASTER CONCEPT PLAN FOR PORTICO stamped received _____, except as modified by the conditions below.

   The Residential Planned Development (RPD) allows a maximum of 1,600 dwelling units; including 162 Townhomes.

   This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

   Revisions Proposed: Section A and B have been revised to reflect more recent formatting of zoning resolutions as well as the requested increase of dwelling units.

2. The following limits apply to the project and uses:

   a. Schedule of Uses

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Residential Tracts
ACCESSORY USES AND STRUCTURES
COMMUNICATION FACILITY, WIRELESS
DWELLING UNITS
SINGLE-FAMILY ~~- 1,058 maximum~~
TWO FAMILY ATTACHED – ~~64 units Maximum~~
TOWNHOUSE ~~- 120 maximum. See Condition 15.~~
~~1,178 MAXIMUM Dwelling units~~
ENTRANCE GATES, AND GATEHOUSE~~- In compliance with LDC §34-1748~~
ESSENTIAL SERVICES
ESSENTIAL SERVICE FACILITIES -Group I ONLY
~~Communication, telephone and electrical distribution facilities up to 425 square feet in area and 10 feet in height.~~

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EXCAVATION, WATER RETENTION - ~~NO blasting or removal of excavated material off site.~~
FENCES, WALLS, ~~Per LDC §34-1741~~
HOME OCCUPATION, ~~Per LDC §34-1741 *et seq.* - NO outside help~~.
MODELS: ~~Per LDC §34-1951 *et seq.* - See Condition 5.~~
Model Display Center
Model Home
Model Unit
PARKING LOT, ACCESSORY to a model display center, home or unit only
REAL ESTATE SALES ~~- See Condition 5.~~
RECREATION FACILITIES, PERSONAL~~, PRIVATE, ON SITE~~
SIGNS, ~~In accordance with Chapter 30~~
TEMPORARY USES - TEMPORARY SALES, TEMPORARY CONSTRUCTION

Revisions Proposed: The schedule of uses has been amended to reflect the uses expected in the residential tracts only.

Circular References to the Land Development Code and Conditions were deleted due to the language included in Condition 1.b. It does not seem necessary to repeat known provisions of the LDC or conditions from later in the resolution.

Residential Amenities
ACCESSORY USES AND STRUCTURES
ADMINISTRATIVE OFFICES
COMMUNICATION FACILITY, WIRELESS
CONSUMPTION ON PREMISES ~~- Amenity sites only. See Condition 10 of Resolution #Z-04-080.~~
CLUBS, CLUBHOUSE - PRIVATE. ~~Amenity sites only as shown on the approved Master Concept Plan. Also See Condition 10.~~
~~DOCKS, FISHING PIERS~~
ESSENTIAL SERVICES
ESSENTIAL SERVICE FACILITIES -Group I ONLY
~~Communication, telephone and electrical distribution facilities up to 425 square feet in area and 10 feet in height.~~
EXCAVATION, WATER RETENTION ~~- NO blasting or removal of excavated material off site.~~
FENCES, WALLS, ~~Per LDC §34-1741~~
FOOD AND BEVERAGE SERVICES, LIMITED ~~- Amenity sites only. See Condition 10.~~
PARKING LOT, ACCESSORY
PERSONAL SERVICES - Group I ~~- Amenity sites only, See Condition 10.~~
REAL ESTATE SALES
RECREATION FACILITIES, PRIVATE, ON SITE
STORAGE, INDOORS
TEMPORARY USES - TEMPORARY SALES, TEMPORARY CONSTRUCTION

Revisions Proposed: The schedule of uses has been amended to reflect the uses expected in the amenity tract only. The Master Concept Plan has been

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simultaneously updated to identify the Amenity Tract.

Circular References to the Land Development Code and Conditions were deleted due to the language provided in Condition 1.b. It does not seem necessary to repeat known provisions of the LDC or conditions from later in the resolution.

b. Site Development Regulations

Single Family

Minimum Lot Areas and Dimensions	
Lot Size:	~~6,500~~ 5,500 square feet
Lot Size, abutting lakes:	~~3,600~~ 4,500 square feet
Lot Width:	50 feet
Lot Depth:	110 feet
Lot Depth, abutting lakes:	90 feet

Minimum Setbacks	
Street	20 feet
Side	5 feet ~~(Per Condition 10)~~
Rear	10 feet (5 feet - accessory)
Water body (Phase 1)	20 feet (15 feet – accessory)
Water body (Phase 2 & 3)	0 feet (subject to Deviation 17)

Building Separation:	10 feet
Perimeter Setbacks:	15 feet
Maximum Height:	~~2 stories~~/35 feet
Maximum Lot Coverage:	60 percent

Two Family Attached

Minimum Lot Areas and Dimensions	
Lot Size:	~~3,850~~ 3,330 square feet
Lot Size, abutting lakes:	2,700 square feet
Width:	~~35~~ 30 feet
Depth:	110 feet
Lot Size, abutting lakes:	90 feet

Minimum Setbacks:	
Street	20 feet
Side	Internal Wall = Zero feet Exterior Wall = 5 feet (Per Condition 9)
Rear	~~15~~ 10 feet (5 feet accessory)

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Water body (Phase 1)	20 feet (15 feet – accessory)
Water body (Phase 2 & 3)	0 feet (subject to Deviation 17)
Building Separation:	10 feet
Perimeter Setbacks:	15 feet
Maximum Height:	~~3 stories~~ / ~~35~~ 45 feet

~~Buildings exceeding 35 feet in height must maintain additional building setbacks as regulated by LDC §34-2174(a).~~

Maximum Lot Coverage: 60 percent

Revisions Proposed: References back to the LDC were deleted due to the language of Condition 1.b. Number of stories deleted to follow current practice for property development regulations. Additional revisions are proposed to address the changes to the Land Development Code which now prohibit lake maintenance easements from occurring on individual lots.

Townhouse

Minimum Lot Areas and Dimensions

Lot Size:	2,200 square feet
Width:	20 feet
Depth:	110 feet

Minimum Setbacks:

Street	20 feet
Side	Internal Unit = Zero feet
	External Unit = 5 feet
Rear	10 feet
Rear from Indigenous Pres	25 feet
Water body	20 feet
Building Separation:	20 feet
Perimeter Setbacks:	15 feet
Maximum Height:	45 feet

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~~Buildings exceeding 35 feet in height must maintain additional building setbacks as regulated by LDC §34-2174(a).~~

Maximum Lot Coverage: 60 percent

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Revisions Proposed: Townhouse uses added back into the schedule of uses and accompanying property development regulations provided. Two rear lot line setbacks are proposed to address the existing conditions of the subject property. A supporting deviation has been requested to support this setback.

Clubhouse/Amenity Sites

Minimum Lot Areas and Dimensions	
Lot Size:	6,500 square feet
Lot Width:	50 feet
Lot Depth:	110 feet
Minimum Setbacks	
Street	20 feet
Side	10 feet
Rear	20 feet (5 feet accessory)
Water body	20 feet (5 feet accessory) (Except as provided in Deviation #~~96~~6)
Building Separation:	20 feet
Perimeter Setbacks:	15 feet
Maximum Height:	~~2 stories~~ / 50 feet

~~Buildings exceeding 35 feet in height must maintain additional building setbacks as regulated by LDC §34-2174(a).~~

Maximum Lot Coverage:	60 percent

Revisions Proposed: References back to the LDC were deleted due to the language of Condition 1.b. Number of stories deleted to follow current practice for property development regulations. The schedule of deviations includes renumbering to address deviations that were denied, that renumbering has been incorporated here.

~~3. No development blasting is permitted as part of this project unless approved at a subsequent public hearing as an amendment to the planned development.~~

Revisions Proposed: Blasting is not included in the schedule of uses and therefore not permitted. A duplicative condition is not necessary.

3. *Agricultural* uses. Existing bona fide agricultural uses on this site are allowed only in strict compliance with the following:

a. Bona fide agricultural uses that are in existence at the time this resolution is approved and as shown on Exhibit B attached hereto may continue until approval of a local development order for the area of the project containing those uses.

b. Additional clearing or grading of existing agricultural uses is prohibited. This

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prohibition is not intended to preclude County approved requests for the removal of exotic species.

c. The property owner must terminate the agricultural tax exemption for any portion of the property that receives a local development order. The agricultural use must cease by December 31st of the calendar year in which the local development order is issued. The exemption termination must be filed with the Property Appraiser's Office by December 31st of the calendar year in which the local development order is issued. A copy of the exemption termination must be provided to the Office of the County Attorney.

4. *Model Homes/Temporary Real Estate Sales/Temporary Sales Trailer.*

a. The number of model homes or model units will be limited to no more than 30 within the development at one time.

~~b. Any model homes or units must be developed within the area identified as "models", "townhouse site" or "model display center" on the approved Master Concept Plan.~~

c. Models cannot be of the same floor plan and each must be a distinctly different design.

d. Model Display Centers or Model Display Groups must be shown on the development order plans. Parking areas for these uses will be buffered with a single-row hedge and tree canopy for parking areas per the LDC.

e. Real Estate sales are limited to temporary real estate trailers, model units, model homes, model display centers, models ~~within the townhouse site, amenity sites, and clubhouses~~.

f. Real estate sales will be limited to the sale of lots or units within the development only.

g. Hours of operation for both models and real estate sales are limited to Monday through Sunday, 8:00 a.m. through 8:00 p.m.

~~h.~~ Model homes and temporary real estate sales will be valid <u>until the last lot is sold.</u> ~~for a period of up to six years from the date of issuance of a Certificate of Occupancy of a model home per LDC §34-1954(d)(1).~~

Revisions Proposed: The model homes have been deleted from the Master Concept Plan to enable the developer to choose the appropriate model location based on market conditions at the time of development order. As such, the language identifying model home locations is no longer needed. The deviation regarding the timing of sales has been revised and an extension is requested until the last lot is sold within the subdivision to address the size of the community. Please see the Schedule of Deviations for additional detail.

5. All required buffers must utilize 100 percent native vegetation.

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6. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

7. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, all other Lee Plan provisions.

~~*8. Five-foot setback.*~~

~~a. No structures, including but not limited to, sidewalks, mechanical equipment, door stoops, walls, etc., may be constructed or placed within the required five-foot side setbacks; or~~

~~b. Prior to issuance of Certificate of Occupancy on each lot, the Engineer of Record must certify that the drainage for each lot is built in compliance with the typical lot grading detail (See Exhibit D Sheet 8 of the approved Master Concept Plan) provided as part of the building permit process.~~

Revision Proposed: Condition deleted by ADD2017-00184.

8. *Residential Amenities: Private Clubs, Consumption on Premises, Food & Beverage Services, Personal Services, Group I (all uses).*

a. The private club ~~se uses are~~ is limited to a maximum of ~~7,500~~ 9,000 square feet of floor area for the entire development. Outdoor Consumption on Premises is limited to the area depicted on Sheet X-108 of the Master Concept Plan.

Revision Proposed: The square footage has been updated to reflect the square footage of the single amenity location and the COP has been added to reflect the revised the Master Concept Plan.

~~b. Consumption on Premises is limited to sales within a residential clubhouse setting only. No restaurants, bars, package stores, or similar uses are permitted.~~

Revision Proposed: The schedule of Uses has been revised so that these uses are limited to the residential amenity tracts. Additionally, restaurants, bars, package stores are not included in the schedule of uses and therefore not permitted. As a result, this portion of the condition is no longer necessary.

c. Hours of operation for these uses are limited to 7:00 a.m. to midnight daily.

~~d. Outdoor seating (outside of the fenced clubhouse area) for Consumption on Premises may be approved by Special Exception only (public hearing required).~~

~~e. Outdoor sales of alcohol is prohibited, and may not be permitted on a temporary~~

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~~or permanent basis.~~

Revision Proposed: These items conflict with each other as well as item b. above. Additionally, the schedule of uses limits temporary uses to sales and construction only therefore portions of this condition are not necessary.

f. The clubhouse as shown on ~~the amenity site of~~ the approved Master Concept Plan is limited to a maximum ~~14~~ 9,000 square feet building ~~under air and 22,000 square feet under roof. There must be a minimum 366± feet of separation between the front door of the clubhouse and the school property, and a minimum of 1,122± feet of separation from the clubhouse building to the school building in accordance with the Master Concept Plan.~~

Revision Proposed: The square footage is amended to reflect the type of amenity proposed to be located in the single amenity location on the revised Master Concept Plan. The schedule of uses has been revised so that consumption on premises is limited to the residential amenity tracts and a typical was added to Sheet X-108 of the Master Concept Plan. A perimeter berm with landscaping has been constructed along the southern property boundary where the amenity area is proposed prohibiting access from surrounding properties. Therefore, the remaining portion of the condition is not necessary. Additionally, the property development regulations, including setbacks, for the amenity are proposed to remain as previously approved.

9. Prior to local development order approval, a protected species survey for burrowing owls and burrows within the upland portions of the project within the phase being covered in the development order must be submitted for review, field verification, and approval by the Division of Environmental Sciences' staff. If burrowing owls or burrows are located, then a burrowing owl management plan, including an appropriate preservation area within the project, must be submitted.

10. Prior to local development order approval, the development order plans must include a minimum of ±8.67 acres of open space within the two-family attached tract townhouse tract of which ±6.62 acres must be indigenous preservation, and approximately ±25 acres of wetland preservation on the remainder of the site.

11. The development order must provide an enhanced 25-foot-wide "D" buffer along Buckingham Road including 10 trees per 100 linear feet (which must include live oaks, no palms) and a berm a minimum of three feet in height.

Revision Proposed: This buffer has already been planted.

12. The development order must provide a 25-foot-wide landscaped buffer/berm combination along the southern boundary of the subject property where it abuts the school site. Atop the berm will be intermittent landscaping and/or wall with a minimum height of six feet. All berming and walls must meet LDC requirements.

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Revision Proposed: This buffer/berm has already been planted.

10. Townhouse buildings must be set back a minimum of ±1,000 linear feet from Buckingham Road, as shown on the approved Master Concept Plan.

11. The 20-foot-wide lake maintenance easements, along lakes that are completely surrounded by private lots, must be made accessible by maintenance vehicles from a road, through a 20-foot-wide lake access easement.

Revision Proposed: Since the time of the zoning approval and recorded plats, the LDC has been amended to require lake maintenance easements outside of single family lots. To memorialize the existing conditions of the subdivision, a deviation has been requested to allow the lake maintenance easement to remain within the single family lots for those lots which have been platted prior to the requested zoning amendment.

The applicant confirms any lots platted after the approval of this Planned Development Amendment will NOT have lake maintenance easements within the lots. As a result of this condition and the existing infrastructure on-site revised property development regulations are proposed

12. Any additional site access points, such as a separate construction access, would require an amendment to the RPD zoning.

~~13. There are several pyramid shaped symbols and text shown along Buckingham Road on the MCP that are not legible. The applicant must revise the MCP so that all information is clearly legible.~~

Revision Proposed: This condition is no longer necessary.

13. If the developer desires to deviate from the regulations contained in LDC Chapter 30, pertaining to project signage, the proposed sign package must be submitted for review and approval by the Lee County Department of Community Development prior to the issuance of any local development order for the property.

14. During the March 21, 2005, Board Zoning Hearing, the applicant voluntarily offered to dedicate a 25-foot wide strip along Buckingham Road for County right-of-way purposes, at no cost to Lee County. Dedication of this 25 foot strip may be accomplished by recording an instrument (ie. deed or plat) that grants or dedicates to the County an exclusive easement for right-of-way purposes. [If the easement is dedicated via a plat, the dedication must be clear and unambiguous. Use of the label "future right-of-way" will not be acceptable.] The dedicated area may not be used for required development buffering or any other non-county right-of-way improvements. This dedication must be complete prior to issuance of the first building permit allowing permanent vertical construction within the project.

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SECTION C. DEVIATIONS:

A schedule of deviations has been provided to renumber the deviations and eliminate those that were previously denied.

~~1.~~ ~~Deviation (1) seeks relief from the LDC §10-328(a) requirement to provide a minimum 20-foot-wide maintenance access easement along lake perimeters, to allow zero feet where lakes are bulkheaded. This deviation is DENIED.~~

1. Deviation (~~2~~1) seeks relief from the LDC §10-329(d)(1)a.2 requirement prohibiting excavation for water retention or detention within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow excavation within 50 feet of an existing or proposed right-of-way line or easement. This deviation is APPROVED, SUBJECT TO the following conditions:

    a. Approval is limited to water retention and detention areas ~~as shown on~~ in substantial compliance with the approved Master Concept Plan.

    b. Appropriate protection for wayward vehicles must be provided at the time of local development order.

Revision Proposed: Minor changes are often made to the shape of stormwater management areas at the time of DO. The suggested language will permit these minor changes to occur with necessitating an administrative amendment to the Master Concept Plan.

2. Deviation (~~3~~2) seeks relief from the LDC §10-329(d)(1)a.3 requirement for water retention or detention excavation to set back 50 feet from any private property line under separate ownership, to permit a 25-foot setback for internal and external property lines. This deviation is APPROVED, SUBJECT TO the following conditions:

    a. Approval is limited to water retention and detention areas ~~as shown on~~ in substantial compliance the approved Master Concept Plan.

    b. A minimum 4-foot high fence or other approved barrier must be provided along the private property line under separate ownership adjacent to the lake.

Revision Proposed: Minor changes are often made to the shape of stormwater management areas at the time of DO. The suggested language will permit these minor changes to occur with necessitating an administrative amendment to the Master Concept Plan. Additionally, private property lines under separate ownership provides clarity as to when the condition approving this deviation applies. Further details regarding this deviation are provided in the attached Schedule of Deviations.

3. Deviation (~~4~~3) seeks relief from the LDC §10-329(d)(4) requirement that lake banks be sloped at a maximum 4:1, to allow bulkheads at the shoreline. This deviation is APPROVED, SUBJECT TO the following conditions:

    a. Prior to local development order approval, any bulkheads to be installed within

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Lakes A, B, or D as labeled on the attached Master Concept Plan must be delineated on the landscape and engineering plans. The bulkheads may not encompass more than 30 percent of the linear shoreline of the lake measured at control elevation. A compensatory littoral zone equal to the linear footage of the bulkhead must be provided within the same lake meeting the following criteria:

(1) A 5-foot-wide littoral shelf planted with herbaceous wetland plants to provide 50 percent coverage at time of planting; or

(2) An 8:1 slope littoral shelf with herbaceous wetland plants to provide 50 percent coverage at time of planting; or

(3) An equivalent littoral shelf design as approved by the Division of Environmental Sciences' Staff.

(4) The compensatory littoral zone must be planted with native wetland plants calculated as two per linear foot of shoreline for lakes utilizing bulkheads up to 20 percent of the shoreline, and three plants per linear foot of shoreline for lakes utilizing bulkheads along 21 percent to 31 percent of the shoreline.

4. Deviation (~~5~~4) seeks relief from the LDC §10-384(b) requirement to provide a 20-foot-wide fire department access lane in the rear of buildings that fall into classes set forth in LDC §10-384(a)(3), to allow decks ancillary to the amenity site to be located zero feet from a water body. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Approval is limited to amenity areas, water retention and detention areas as shown on the approved Master Concept Plan.

b. The developer must provide written documentation from the Fort Myers Shores Fire Department indicating that this design is acceptable and allows adequate access for emergency vehicles.

~~5. Deviation (6) - WITHDRAWN.~~

5. Deviation (~~7~~5) seeks relief from LDC §34-934 Note 23 which restricts the operation of real estate sales centers for a period not to exceed five years, to allow the operation of a sales office within Portico RPD ~~for a period of six years~~ until the last lot is sold. This deviation is APPROVED, SUBJECT TO the condition that the real estate sales office remains in compliance with Condition 5 above.

Additional detail regarding the language requested to be revised is included in the attached Schedule of Deviations.

~~6. Deviation (8) - WITHDRAWN.~~

6. Deviation (~~9~~6) seeks relief from the LDC §34-2194(b) requirement to provide a 25-foot

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setback for buildings from a water body, to allow a zero-foot setback at bulkhead areas. This deviation is APPROVED, SUBJECT TO Deviation (4) above.

7. Deviation (~~10~~7) seeks relief from the LDC §34-935(b)(2) requirement that parking or internal roads or drives not be closer to the development perimeter than the greater of either the width of any buffer area or landscape strip required by Chapter 10, to allow an emergency access road within this area. This deviation is APPROVED, SUBJECT TO the condition that the approval is limited to the emergency access point shown as Deviation (~~10~~7) on the approved Master Concept Plan.

8. Deviation (~~11~~8) seeks relief from the LDC §10-418 requirement that storm water ponds be designed to mimic the function of natural systems, to allow for the use of bulkheads. This deviation is APPROVED, SUBJECT TO Deviation (4) above.

9. Deviation (~~12~~9) seeks relief from the LDC §10-714 design standards for cul-de-sacs, to allow the use of "eyebrow" road elements on the Village Roads within the community. This deviation is APPROVED, SUBJECT TO the following conditions:

   a. Approval is limited to the detail plan and locations as shown on the approved Master Concept Plan.

   b. Traffic calming devices indicated in the approved Master Concept Plan must be included in the homeowner documents to be reviewed and recorded during the local development order process.

~~10. Deviation (13) Withdrawn.~~

10. Deviation (~~14~~10) seeks relief from the LDC §34-152(4)c.4 requirement that on-site directional signage be set back a minimum of 15 feet from the edge of the street right-of-way or easement, to allow on-site directional signs to have a setback of four feet. This deviation is DENIED in accordance with Condition 19.

11. Deviation (~~15~~11) seeks relief from the LDC §10-285(a) requirement that the centerline distance for local roads be 125 feet, to allow for centerline distances of no less than 60 feet for the eyebrow road features. This deviation is APPROVED, SUBJECT TO the following conditions:

   a. Approval is limited to the detail plan and locations as shown on the approved Master Concept Plan.

   b. Traffic calming devices indicated in the approved Master Concept Plan must be included in the homeowner documents to be reviewed during the local development order process.

   c. Stop signs will be provided for vehicles exiting the eyebrow element.

   d. Traffic control devices will be determined during development order review.

12. Deviation (~~16~~12) seeks relief from the LDC §10-291(3) requirement that residential developments of more than five acres provide more than one means of ingress or

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egress, to allow for one main access on Buckingham Road and a minimum of two emergency access points. This deviation is APPROVED, SUBJECT TO the following conditions:

a. No walls, fences or entrance gates may be constructed within the access point area per the approved Master Concept Plan.

b. All utilities along the entrance from Buckingham Road as shown on the approved Master Concept Plan must be placed underground.

c. The local development order must depict a 70-foot-wide divided entrance on Buckingham Road that must include a 14-foot-wide median with two 11-foot-wide lanes on both sides of the median for ingress and egress in accordance with the primary corridor typical shown on the approved Master Concept Plan.

d. The local development orders must include emergency access gates to be constructed on two emergency access points as shown on the approved Master Concept Plan.

e. The installation of any access gates must comply with all applicable regulations pertaining to emergency equipment that are in effect at the time of installation.

f. Prior to issuance of a development order, the developer must provide written documentation from the Fort Myers Shores Fire Department indicating that these access points are acceptable and provide adequate access for emergency vehicles.

g. If the emergency access point located near the southeast corner of Phase 2, into Hawks Haven is not available at time of local development order submittal for that phase of work, then the emergency access must connect to the Lehigh Acres roadway system through the existing platted roadway easement. This will require a culvert across the east-west canal lying south of Phase 2 of Portico RPD. Such a change can be approved administratively.

13. Deviation (~~17~~13) seeks relief from the LDC§10-416(d)(6) requirement that roadways must be set back 125 feet from any existing residential development or provide a 30-foot-wide buffer consisting of an 8-foot-high wall constructed a minimum of 25 feet from the residential property line with landscaping planted between the wall and the residential property line, to allow an 8-foot-high wall a minimum of 10 feet from the residential property line with landscaping planted between the wall and the residential property line. This deviation is APPROVED.

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Portico

Residential Planned Development Amendment

Schedule of Deviations

The existing Portico RPD approved through Resolution Z-04-080 permits a maximum of 1,178 dwelling units. Development Order applications DOS2004-00352, DOS2007-00128, DOS2016-00080, have been approved for the site infrastructure, and approximately 1,122 dwelling units. The site has been cleared, graded, and public utilities and roadways have been installed pursuant to the ERP and DO, and conservation easements recorded. WCI Communities, LLC is seeking an Amendment to the existing Planned Development to permit an additional 422 dwelling units, totaling 1,600 dwelling units.

The following deviations are currently approved via Resolution Z-04-080 and the applicant wants to retain the deviations. The deviations have been renumbered to eliminate those deviations that were denied in Z-04-080

~~Deviation (1) seeks relief from the LDC §10-328(a) requirement to provide a minimum 20- foot-wide maintenance access easement along lake perimeters, to allow zero feet where lakes are bulkheaded. This deviation is DENIED~~.

Deviation (~~2~~1) seeks relief from the LDC §10-329(d)(1)a.2 requirement prohibiting excavation for water retention or detention within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow excavation within 50 feet of an existing or proposed right-of-way line or easement. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Approval is limited to water retention and detention areas ~~as shown on~~ in substantial compliance with the approved Master Concept Plan.
b. Appropriate protection for wayward vehicles must be provided at the time of local development order.

Minor changes are often made to the shape of stormwater management areas at the time of DO. The applicant request staff consider the revised language to permit such minor revisions. The suggested language will permit minor changes to occur without necessitating an administrative amendment to the Master Concept Plan.

Deviation (~~3~~2) seeks relief from the LDC §10-329(d)(1)a.3 requirement for water retention or detention excavation to set back 50 feet from any private property line under separate ownership, to permit a 25-foot setback for external ~~internal~~ property lines. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Approval is limited to water retention and detention areas ~~as shown on~~ in substantial compliance with the approved Master Concept Plan.
b. A minimum 4-foot high fence or other approved barrier must be provided along the private property line under separate ownership adjacent to the lake.

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The applicant is proposing to update the language of the approved deviation to accurately reflect the case file from the original zoning. The original Staff Report published on December 1, 2004, this deviation is discussed on Page 8 of 20. The deviation and supporting analysis from staff was written to include varying setbacks from internal property boundaries and external property boundaries where lakes did not abut residential lots internal to the subdivision. This request is supported by the cross-section depicted on the Master Concept Plan (copied below for reference). Staff recommended approval of the deviation as written stating:

> ***A 20-foot internal setback and a 25-foot external setback is adequate to protect the public health, safety and welfare - given the limitation to lakes as shown on the approved Master Concept Plan.***
>
> ***Staff finds this request enhances the objectives of the planned development and preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare. Staff recommends APPROVAL of the deviation request with one condition.***
>
> ***1. Approval is limited to water retention and detention areas as shown on the approved Master Concept Plan.***

The Hearing Examiner Recommendation published January 17, 2005 included the deviation as approved by Z-05-080, mistakenly reversing the requested setbacks and eliminating the external relief. Page 12 of the Hearing Examiner recommendation notes that Staff was recommending approval of the deviations related to water retention/waterbodies and roadway setbacks along with a few other deviations. On the same page the Hearing Examiner concurs with Staff's Analysis, findings and recommendation of approval, with conditions, of the requested rezoning. The applicant discussed the requested deviation, which is summarized on Page 23 of the Hearing Examiner 's recommendation is a very brief discussion of the deviation, which notes:

> **Deviation 3 requested relief from LDC Section 10-329(d)(1) a.3, which required water retention or detention excavation to be setback 50 feet from any private property line under separate ownership, to permit a 25-foot setback for external property lines. It had originally read a 20-foot setback for internal property lines and 25 feet for external property lines; the project only needed to comply with the 25-foot setback for external property lines.**

Given the history of the requested deviation and the summaries provided in the Hearing Examiner recommendation, the applicant requests that the language of this approved deviation be updated to reflect the appropriate setback from the external property boundary, which is also memorialized on the approved Master Concept Plan.

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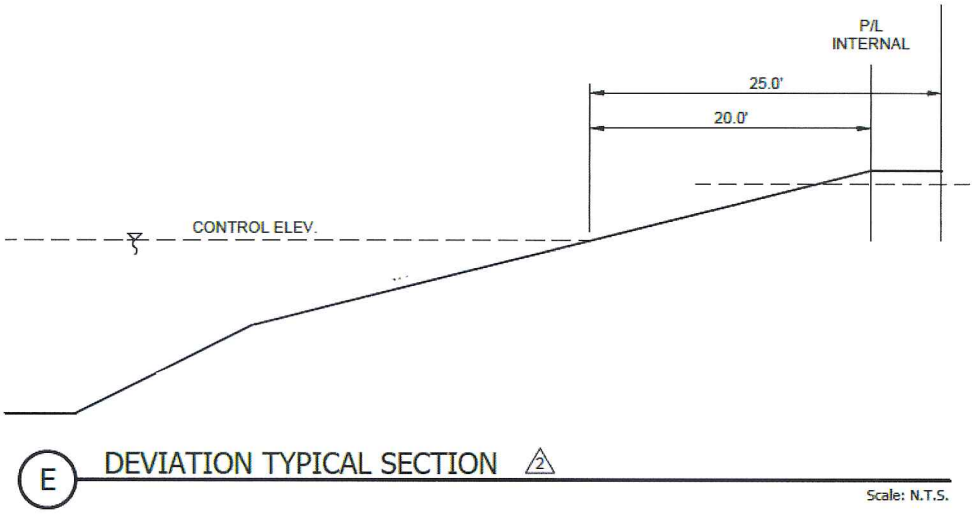


Figure 1. Deviation Typical from Z-05-080

Deviation (43) seeks relief from the LDC §10-329(d)(4) requirement that lake banks be sloped at a maximum 4:1, to allow bulkheads at the shoreline. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Prior to local development order approval, any bulkheads to be installed within Lakes A, B, or D as labeled on the attached Master Concept Plan must be delineated on the landscape and engineering plans. The bulkheads may not encompass more than 30 percent of the linear shoreline of the lake measured at control elevation. A compensatory littoral zone equal to the linear footage of the bulkhead must be provided within the same lake meeting the following criteria:

   i. A 5-foot-wide littoral shelf planted with herbaceous wetland plants to provide 50 percent coverage at time of planting; or
   ii. An 8:1 slope littoral shelf with herbaceous wetland plants to provide 50 percent coverage at time of planting; or
   iii. An equivalent littoral shelf design as approved by the Division of Environmental Sciences' Staff.
   iv. The compensatory littoral zone must be planted with native wetland plants calculated as two per linear foot of shoreline for lakes utilizing bulkheads up to 20 percent of the shoreline, and three plants per linear foot of shoreline for lakes utilizing bulkheads along 21 percent to 31 percent of the shoreline.

Deviation (54) seeks relief from the LDC §10-384(b) requirement to provide a 20-foot-wide fire department access lane in the rear of buildings that fall into classes set forth in LDC §10-384(a)(3), to allow decks ancillary to the amenity site to be located zero feet from a water body. This deviation is APPROVED, SUBJECT TO the following conditions:

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a. Approval is limited to amenity areas, water retention and detention areas as shown on the approved Master Concept Plan.
b. The developer must provide written documentation from the Fort Myers Shores Fire Department indicating that this design is acceptable and allows adequate access for emergency vehicles.

~~Deviation (6) - WITHDRAWN.~~

Deviation (~~7~~5) seeks relief from LDC §34-934 Note 23 which restricts the operation of real estate sales centers for a period not to exceed five years, to allow the operation of a sales office within Portico RPD ~~for a period of six years~~ until the last building permit is issued. This deviation is APPROVED, SUBJECT TO the condition that the real estate sales office remains in compliance with Condition 5 above.

The applicant requests the language of this deviation be revised to extend the periods by which a real estate sales office may occur within the residential subdivision. The applicant has proposed a few changes related to model homes, specifically they have been removed from the Master Concept Plan. However, they remain within the schedule of uses. This structure will permit the developer to have flexibility as to the location and type of unit to respond to the pace and location of demand for units.

The original extension allowing real estate sales for units and lots within the development for up to six years was recommended for approval by staff under the premise that the project would reach build-out by 2009 as stated by the applicant's justification in DCI2004-00031. The Portico RPD was approved on March 21, 2005 per Z-04-080. Staff states in the Staff Report for DCI2004-00031 that the size of the development contributes to the extension granted for real estate sales. Given that the initial request allowed for the real estate sales use to be permitted on the Property until approximately 2011, two years after the anticipated build-out date, it would appear the use and extension were not found detrimental to public health, safety, or welfare. Furthermore, the Staff Report explicitly states, "Staff finds this request [Deviation #7] enhances the objectives of the planned development and preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare." As the original zoning resolution granted the temporary use years after anticipated build-out, sales of lots and/or constructed homes could continue to occur after build out. It would seem to be appropriate to continue to permit real estate sales to occur for lots within the community until all the available lots are sold. The proposed change to the language in this deviation is being pursued to better reflect the condition of the original approval and permit fluctuations to occur based on market conditions.

Due to the proposed changes to eliminate the location of models from the MCP and the modifications to the Schedule of Uses, the applicant has also proposed some revisions to Condition 5 (included in full below); however, the following limitations remain:

- **Demonstrating Model Display Centers and Groups on the Development Order Plans.**
- **Limiting the floor plans and number of models.**
- **Limiting Real Estate Sales to models as well as the amenity per the schedule of uses as well as the proposed conditions.**
- **Hours of operation are Monday through Sunday from 8am to 8pm.**
- **Sales are limited to the Portico Subdivision Only.**

These remaining conditions and limitations will adequately protect the future residents of the Portico Community from the activity that can occur surrounding real estate sales.

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Requesting to permit the sales office to remain open until the last building permit is issued enables WCI Communities to continue to sell available lots throughout the construction of the development. As well as having the opportunity to retain the initial locations of real estate sales if the models are not purchased. This flexibility eliminates logistics and downtime required by having to construct different model units and relocate the sales office every six years. Given that the first phase of infrastructure was completed, and the development was stymied by the recession and as a result only a few homes have been on the tax rolls since 2007 it would seem reasonable to extend the timeframe real estate sales could occur and the applicant is willing to cease sales when the last lot is sold.

5. *Model Homes/Temporary Real Estate Sales/Temporary Sales Trailer.*

   a. The number of model homes or model units will be limited to no more than 30 within the development at one time.

   ~~b. Any model homes or units must be developed within the area identified as "models", "townhouse site" or "model display center" on the approved Master Concept Plan.~~

   c. Models cannot be of the same floor plan and each must be a distinctly different design.

   d. Model Display Centers or Model Display Groups must be shown on the development order plans. Parking areas for these uses will be buffered with a single-row hedge and tree canopy for parking areas per the LDC.

   e. Real Estate sales are limited to temporary real estate trailers, model units, model homes, model display centers, models ~~within the townhouse site, amenity sites, and clubhouses~~.

   f. Real estate sales will be limited to the sale of lots or units within the development only.

   g. Hours of operation for both models and real estate sales are limited to Monday through Sunday, 8:00 a.m. through 8:00 p.m.

   h. Model homes and temporary real estate sales will be valid until the last building permit is issued. ~~for a period of up to six years from the date of issuance of a Certificate of Occupancy of a model home per LDC §34-1954(d)(1).~~

~~Deviation (8) - WITHDRAWN.~~

Deviation (~~9~~6) seeks relief from the LDC §34-2194(b) requirement to provide a 25-foot setback for buildings from a water body, to allow a zero-foot setback at bulkhead areas. This deviation is APPROVED, SUBJECT TO Deviation (43) above.

Deviation (~~10~~7) seeks relief from the LDC §34-935(b)(2) requirement that parking or internal roads or drives not be closer to the development perimeter than the greater of either the width of any buffer area or landscape strip required by Chapter 10, to allow an emergency access road within this area. This deviation is APPROVED, SUBJECT TO the condition that the approval is limited to the emergency access point shown as Deviation (~~10~~7) on the approved Master Concept Plan.

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Deviation (~~11~~8) seeks relief from the LDC §10-418 requirement that storm water ponds be designed to mimic the function of natural systems, to allow for the use of bulkheads. This deviation is APPROVED, SUBJECT TO Deviation (43) above.

Deviation (~~12~~9) seeks relief from the LDC §10-714 design standards for cul-de-sacs, to allow the use of "eyebrow" road elements on the Village Roads within the community. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Approval is limited to the detail plan and locations as shown on the approved Master Concept Plan.
b. Traffic calming devices indicated in the approved Master Concept Plan must be included in the homeowner documents to be reviewed and recorded during the local development order process.

~~Deviation (13) Withdrawn.~~

~~Deviation (14) seeks relief from the LDC §34-152(4)c.4 requirement that on-site directional signage be set back a minimum of 15 feet from the edge of the street right-of-way or easement, to allow on-site directional signs to have a setback of four feet. This deviation is DENIED in accordance with Condition 19.~~

Deviation (~~15~~10) seeks relief from the LDC §10-285(a) requirement that the separation distance be measured from the edge of the outermost lane of the nearest roadway/connection to the nearest edge of pavement of the proposed intersecting connection for local roads in a Future Suburban Areas which are required to be 125 feet, to allow ~~for centerline distances of no less than 60~~ a separation distance of 36 feet for the eyebrow road features. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Approval is limited to the detail plan and locations as shown on the approved Master Concept Plan.
b. Traffic calming devices indicated in the approved Master Concept Plan must be included in the homeowner documents to be reviewed during the local development order process.
c. Stop signs will be provided for vehicles exiting the eyebrow element.
d. Traffic control devices will be determined during development order review.

Justification: Since the time of approval of this deviation, the Land Development Code has been amended to require connection separation to be measured "from the edge of the outermost lane of the nearest roadway/connection to the nearest edge of pavement of the proposed intersecting connection" rather than the previously approved method of centerline to centerline. The applicant would request the approval of the proposed language of the deviation above to ensure clarity and consistency with the already existing and constructed, platted portions of the community and maintain consistency in design and construction of the roadways proposed in the unplatted portions of the community.

Deviation (~~16~~11) seeks relief from the LDC §10-291(3) requirement that residential developments of more than five acres provide more than one means of ingress or egress, to allow for one main access on Buckingham Road and a minimum of two emergency access points. This deviation is APPROVED, SUBJECT TO the following conditions:

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a. No walls, fences or entrance gates may be constructed within the access point area per the approved Master Concept Plan.
b. All utilities along the entrance from Buckingham Road as shown on the approved Master Concept Plan must be placed underground.
c. The local development order must depict a 70-foot-wide divided entrance on Buckingham Road that must include a 14-foot-wide median with two 11-foot-wide lanes on both sides of the median for ingress and egress in accordance with the primary corridor typical shown on the approved Master Concept Plan.

The subdivision entry and supporting infrastructure was installed consistent with DOS2004-00352

d. The local development orders must include emergency access gates to be constructed on two emergency access points as shown on the approved Master Concept Plan.
e. The installation of any access gates must comply with all applicable regulations pertaining to emergency equipment that are in effect at the time of installation.
f. Prior to issuance of a development order, the developer must provide written documentation from the Fort Myers Shores Fire Department indicating that these access points are acceptable and provide adequate access for emergency vehicles.
g. If the emergency access point located near the southeast corner of Phase 2, into Hawks Haven is not available at time of local development order submittal for that phase of work, then the emergency access must connect to the Lehigh Acres roadway system through the existing platted roadway easement. This will require a culvert across the east-west canal lying south of Phase 2 of Portico RPD. Such a change can be approved administratively.

One of the emergency access points, into River Hall (fka Hawks Haven) has been constructed consistent with DOS2004-00352. The second emergency access point is included on the Master Concept Plan and is not proposed to be moved as part of this application request.

Deviation (~~17~~12) seeks relief from the LDC§ 10-416(d)(6) requirement that roadways must be set back 125 feet from any existing residential development or provide a 30-foot-wide buffer consisting of an 8-foot-high wall constructed a minimum of 25 feet from the residential property line with landscaping planted between the wall and the residential property line, to allow an 8-foot-high wall a minimum of 10 feet from the residential property line with landscaping planted between the wall and the residential property line. This deviation is APPROVED.

The wall and landscaping were installed consistent with DOS2004—00352.

Additional Deviations

The following deviations are new to this application and at the applicant's request are in addition to the original Residential Planned Development:

Deviation (13) seeks relief from LDC Sec. 10-328(a) which requires, a 20-foot-wide easement or right-of-way on both sides of the canal, lakes or flow-way for maintenance purposes and prohibits the easement from being located within the limits of platted single-family residential lot to allow the easement to be located within a platted single family residential lot for this lots included in the Portico Phase 1 Plat, Instrument Number 2006000411756.

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Justification: Portico is an existing semi-developed residential community with a completed Phase 1 Development Order DOS2004-00352 approved on December 12, 2007 as well as a recorded Plat. The applicant does not intend to replat the existing Phase 1 and already has a several lots owned by individual homeowners with residences under construction consistent with the approved site plan as part of DOS2004-003352.

As demonstrated by the existing record plat, the required lake maintenance easement is currently dedicated within the platted single family lots, which was a permitted practice at the time the plat was recorded. Specifically, lake maintenance easements are located within the boundary of the following single-family lots, along Lake A1 lots 6–9; along Lake A9 lots 19-67, 69-89, 92-94, 97-111, 114-128; along Lake A10 lots 130-141; and along Lake B2 lots 297, 299-311, 314-340, 343-356, 359-380 on the recorded plat. The applicant seeks relief from the requirement to provide lake maintenance easement areas off the single family residential lots to enable the approved Development Order, recorded plat and existing conditions to remain. This deviation will not affect the health, safety and welfare of the community and promotes the existing character of the planned development. The designated lake maintenance easement will remain and does not permit structures or accessory uses to encroach into the easement ensuring clearance for maintenance to occur.

Deviation (14) seeks relief from LDC Sec. 10-329(d)(4) which requires lake banks to be sloped at a ratio of not greater than six horizontal to one vertical (6:1) from the top of bank to a water depth of two feet below the dry season water table to allow the existing constructed lake banks slopes, at a four horizontal to one vertical (4:1) slope, to remain.

Justification: This deviation applies to the existing lake bank slopes throughout Phase 1 and a portion of Phase 2, ~~2 and 3~~ of the Portico Residential Planned Development. Phase 1 includes the northernmost portion with the main access to the community as well as the southwestern rectangle. Phase 2 and 3 are the southeastern most rectangle of the Portico Community bounded on the North and East by River Hall and to the South by Lehigh Acres. Two of the lakes within Phase 2 are constructed and included in this deviation request. All of the stormwater management lakes within Phase 1 and two stormwater management lakes within Phase 2 are constructed at a 4:1 slope consistent with approved Development Order DOS2004-00352. The applicant seeks relief from the 6:1 lake bank slopes as required by LDC Sec. 10-329(d)(4) to memorialize the existing conditions of the constructed stormwater management lakes in Phase 1 and 2. The lakes are not exhibiting erosion or destabilization despite the lack of development that occurred within the subdivision over the years.

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Figure 1. Existing Lake Near Entry



Figure 2. Existing Lake

Deviation (15) seeks relief from LDC Sec. 10-415(b)(1)(c) which requires buildings to have a minimum setback of 20 feet from preservation areas and a 30-foot setback for indigenous plant communities subject to fire to allow a reduced rear setback for the following existing platted lots: Portico Phase 1, Lots 157-163, 166-177, 179-184, and 187-196 are located along the boundary of "Tract G" conservation areas and a 25ft rear setback for the proposed townhomes.

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Justification: The existing development footprint of the residential subdivision and indigenous native vegetation as demonstrated on the existing Master Concept Plan, approved Development Order and record plat are not being amended as part of this application. Currently, Conservation Areas "Tract F" and "Tract G" on the recorded Portico Phase 1 plat includes wetland and upland indigenous communities immediately adjacent to the proposed Townhome tract on the Master Concept Plan and existing platted single family tracts.

Tract G is immediately adjacent to existing platted single family lots, which per Zoning Resolution Z-04-080 are permitted to have a 10ft rear setback for the principle structure and 5ft setback for an accessory structure. The recorded plat demonstrates the rear of the lots have a 25ft wide drainage easement, which does not permit encroachment by a structure. A review of the existing aerial imagery demonstrates a number of lots are under construction for single family homes in this area of the subdivision. The deviation is requested to memorialize the existing condition of the existing single family homes adjacent to the indigenous preserve. The existing 25ft easement will ensure the necessary 20ft separation from preservation area and the 5ft reduction from the indigenous plant communities will not negatively impact the ability to mitigate a fire should one occur in the indigenous preserve.

Tract F is immediately adjacent to the proposed Townhome tract, which has constructed roadway infrastructure approved by Development Order DOS2004-00352. This existing roadway creates a defined depth between the edge of the constructed roadway and platted preservation area limiting the location for the townhome building to be placed. The front setback of the townhomes is 20ft, which will accommodate 2 parked cars as required by 34-2020(a). Similar to the single family lots a drainage easement is expected to be provided at the rear of the lots, which is required to be a minimum of 20 feet per 10-328(a). The applicant will provide 25 feet between the rear of the structure and the platted conservation area, in excess of the LDC requirements. The requested 5ft reduction from the indigenous plant communities subject to fire will not negatively impact the ability to mitigate a fire should one occur in the indigenous preserve as the 25 ft easement will ensure clearance and accessibility to the preserve.

~~Deviation (16) seeks relief from LDC Sec. 10-415(b)(1)a. which requires large developments, with existing indigenous native vegetation communities to provide 50% of their open space requirement through the onsite preservation of existing native vegetation communities.~~

~~**Justification: The subject property is an existing single family subdivision. Indigenous vegetation has been preserved on-site and is currently under a conservation easement. However, the indigenous vegetation existing on-site is not 50% of the required open space.**~~

~~**Prior to the approval of the Residential Planned Development in 2004 by Z-04-080, the subject property was an active farm field. A review of historical aerial imagery demonstrates the subject property was cleared for agricultural activities as early as 1994. The location of the existing conservation easements preserving native vegetation is the general location of the vegetation that existed on-site in 1994. The existing development footprint preserved the native vegetation to meet this LDC requirement at the time of the initial zoning in 2004. The proposed Master Concept Plan demonstrates no changes to this area are proposed and the conservation easement will remain in place. This deviation is requested to memorialize this existing condition.**~~

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Deviation (~~17~~16) seeks relief from LDC Sec. 10-296(e)(2)(5) Table 15 Suburban Local Streets which requires residential land uses to have 10 ft lane widths, 5 ft planting strip and 5 ft pedestrian facility width for residential uses to allow the roadway cross-sections previously approved as part of the Master Concept Plan.

Justification: The Portico Residential Planned Development was approved by Z-04-080 on March 21, 2005. The Master Concept Plan attached to this resolution, includes 3 typical roadway sections on Sheet 8, titled "Typical Primary Corridor", "Typical Village Entry" and "Typical Village Road". An Administrative Amendment was approved by ADD2016-00184 on January 18, 2017 which includes all of the same Typicals approved by Z-04-080 with the addition of the "Typical Two-Family Attached Road" on Sheet 8 of the approved MCP. This deviation is requested to memorialize the existing and previously approved roadway typical cross sections, which have been constructed in Phase 1 of the Portico Community. The same design is proposed to be carried forward into Phases 2 and 3 as well as the Townhouse Development Tract.

Each of the roadway typicals provides more than the 10 ft minimum travel lane, and all of the typical cross sections abutting the proposed residential units also provide a 4 foot sidewalk throughout the community. The primary corridor and village entry roadways also include a landscaped median and landscaping adjacent to the travel lanes. These roadway typical cross sections have been utilized to design and construct the existing internal roadways in Phase 1 of the community as permitted by DOS2003-00352. Granting the requested deviation will permit the enhancement of the planned development by permitting the remaining roadways to be constructed consistent with the existing internal roadways and infrastructure. Pedestrian mobility will continue to be supported throughout the community as the typical cross sections include sidewalks consistent with the intent of LDC Section 10-296(e)(2)(5). Since these cross-sections have already been approved as part of previous amendments the applicant respectfully requests that they be carried forward as part of this Planned Development Amendment. The approval of this Deviation will only improve the health, safety, and welfare of the residents of the Portico Community and enhance the community's character.

The applicant notes that as a result of County Staff's initial review, the Primary Corridor Cross Section has been updated to memorialize the exiting 4 ft sidewalk on one side of the roadway and require a 4 ft sidewalk to be constructed where a Primary Corridor is proposed in Phase 2 and 3 further ensuring pedestrian mobility and enhancing the community.

Deviation (~~18~~17) seeks relief from LDC Sec. 10-329(d)(4) which requires lake banks to be sloped at a ratio of not greater than six horizontal to one vertical (6:1) from the top of bank to a water depth of two feet below the dry season water table to allow a sloped ratio of four horizontal to one vertical (4:1) above control elevation for the proposed stormwater management lakes.

Justification: The applicant requests relief from the required 6:1 lake bank slopes as required by LDC Sec. 10-329(D)(4) for the unconstructed lake banks in Phase 2 and 3. Since the time of the initial zoning approval for the Portico Community, a number of amendments have been made to the Land Development Code impacting the ability of the applicant to maintain the existing development footprint and provide the required 6:1 slope.

In 2004, the required lake maintenance easement surrounding the stormwater management lakes were permitted to be located within the single family lots. Since that time, the LDC has been amended

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to prohibit this condition. The applicant is not requesting a deviation from this provision of the LDC and as a result, the minimum depth of lots will effectively be reduced from 110 to 90 to accommodate the required easement. The proposed property development regulations for single family lots abutting the lakes have been amended to reflect this condition. Additionally, the design of the community promotes a development footprint in which the roadways are double loaded; however, the lots on either side of the internal roads also abut the water management lakes. This design is memorialized in the existing Master Concept Plan approved by Z-04-080 and DOS2007-00128 as well as ERP 36-05388-P all of which are still active and valid. The proposed Master Concept Plan seeks to maintain this footprint to continue to promote compatibility with the surrounding single family residential developments. Providing the increased lake bank slope as required by the current regulations of the Land Development Code, further reduces the depth of lot which is constrained by the internal roadways as depicted in the image below.

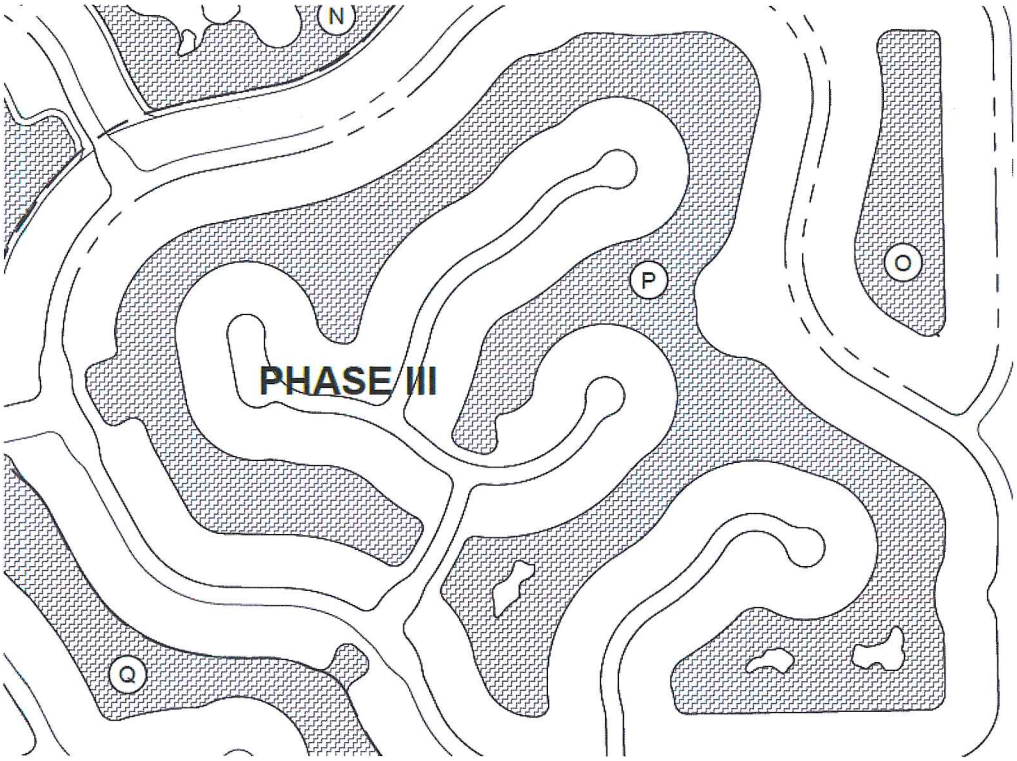


Figure 3. Residential Tracts Surrounded by Lakes

A review of the existing development order and ERP demonstrates there is over 5.6 feet of elevation change between the minimum finished floor design for certain lots and the wet season control line, which is the top of the planted littoral shelf. Utilizing the requested 4:1 slope, approximately 20 to 22 feet of horizontal distance is needed from the wet season control line to the top of bank. At a 6:1 slope, approximately 32 to 34 feet is required, which necessitates an additional 10 to 14 feet of lot area to ensure the residential dwelling unit does not encroach into the lake bank slope. When combined with the existing front setback only 46 feet of buildable depth remains, 64 feet less than the current minimum buildable lot depth. It should also be noted that most lots in the community are not perfectly symmetrical, many are on curving roadways which causes the front setback to extend further into the

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lot to address the curvature of the road. As the structure is moved further into the lot to address the curvature of the roadway, it encroaches upon the 6:1 slope as more lot depth is necessary to provide that slope, these conditions constrain the lot from the front and back. The only remedy to this naturally occurring condition which would permit the provision of a 6:1 slope is a retaining wall, which would require a 2 to 2.5 foot step down from the built structure (home or accessory) to the top of the lake bank. This type of construction is generally not practiced in inland Lee County and would not be uniformly applied to all lots. The lots with a retaining wall would have no backyard, no rear access, and a person behind the residential unit would be at the top of bank with unimpeded access to the water, creating the need for the deviation.

Reducing the front setback for the principle structure would eliminate necessary depth for parked cars in the driveway and create conflicts between parked cars and the sidewalk to be provided along all residential streets within the community. Additionally, maintaining the location of the currently designed lake top of bank and reducing the lake size to establish a 6:1 slope is not viable due to the alterations that would be created to the surface water management storage capacity of the existing permitted system. Storage capacity is a required element of the collective stormwater management system, which directs stormwater into specific locations, holding the water and then permitting an off-site discharge at a set volume per the approved ERP. Reducing the lake size would reduce the storage capacity of the existing system, requiring additional lakes to be constructed and eliminating existing approved developable area. Furthermore, the designed and permitted lakes with the SFWMD have already been committed to the CDD and are already part of the maintenance documents for that entity.

To address the concerns that precipitated the change in regulations, the applicant proposes the following conditions which ameliorate any concerns associated with the requested 4:1 deviation request, the following conditions are proposed in cross section D on Sheet X-108 of the proposed Master Concept Plan.

a) 4:1 slope will only occur above control elevation;
b) Geosynthetic turf reinforcement mat will be utilized along the 4:1 lake slope
c) Rear lots will be graded so no yard or roof drainage flows directly into the lake
d) Rear yard drainage system will connect to road system or directly to lake via pipes out falling below lake elevation (below dry season water table);

Section 10-329(d)(4) of the LDC states, "the deviation may be granted if the Director is satisfied that the enhanced slope protection measures proposed by the applicant will prevent erosion and scouring. Acceptable enhanced slope protection measures include, but are not limited to, use of enhanced herbaceous plantings in combination with an appropriate geosynthetic turn reinforcement mat or similar shoreline stabilization technique that does not include hardened shoreline stabilization technique that does not include hardened structures such as those identified in section 10-418(3)."

Hardened shoreline structure will not be utilized for the lake erosion control, instead the design will provide geosynthetic turf reinforcement mat along with the 4:1 lake slope as depicted on the MCP. Enhanced herbaceous plantings are not required along the geosynthetic turf area as plantings will be provided below the 4:1 slope. Specifically, a "kicker swale" is proposed as the rear yard drainage system to direct surface water along the back of the residential lots parallel to the lake bank. At specific points, the water collected in the kicker swale is directed into a stormwater pipe, which runs perpendicular to the lake bank under the ground, permitting the surface water – after an appropriate timeframe – to discharge into the stormwater management lake below the dry season water table.

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This system increases the time surface water is held and ensures the only water permitted to naturally run down the 4 to 1 lake bank is rain water. The remainder of surface water from the residential lots will be piped into the stormwater management lake below the dry season water table. Together, all of these elements ensure the lake bank does not erode or destabilize as a result of the requested 4:1 slope.

Additionally, the cross section supporting this deviation as proposed demonstrates a 10' drainage easement is to be provided in the rear of the residential lots to support the proposed stormwater management infrastructure. Where this infrastructure is necessary, the 0 ft setback of the Property Development Regulations will not apply. The proposed property development regulations, lot typicals on the Master Concept Plan and proposed revisions to the existing zoning conditions have been revised to reflect this intention of the applicant.

This deviation request permits the enhancement of the planned development by permitting the development footprint to remain ensuring the development character of the existing constructed portion of the community and the future portions of the community are similar. Additionally, as noted in the project narrative, the development footprint of Portico is similar and compatible to the surrounding communities of River Hall (f.k.a. Hawks Haven) as well as Hemmingway's Point and Buckingham 320.

All of the lakes within Phase 1 and two of the lakes within Phase 2 have been constructed at a 4 to 1 slope without the mitigation being offered as part of this deviation request. Additionally, during the recession and until WCI Communities took ownership of the property, the existing lake banks were not maintained. As demonstrated by the photos below, these existing lakes are not demonstrating erosion or destabilization.



Figure 4. Existing Lake Constructed at a 4 to 1 Slope

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Figure 5. Existing Lake Constructed at a 4 to 1 Slope

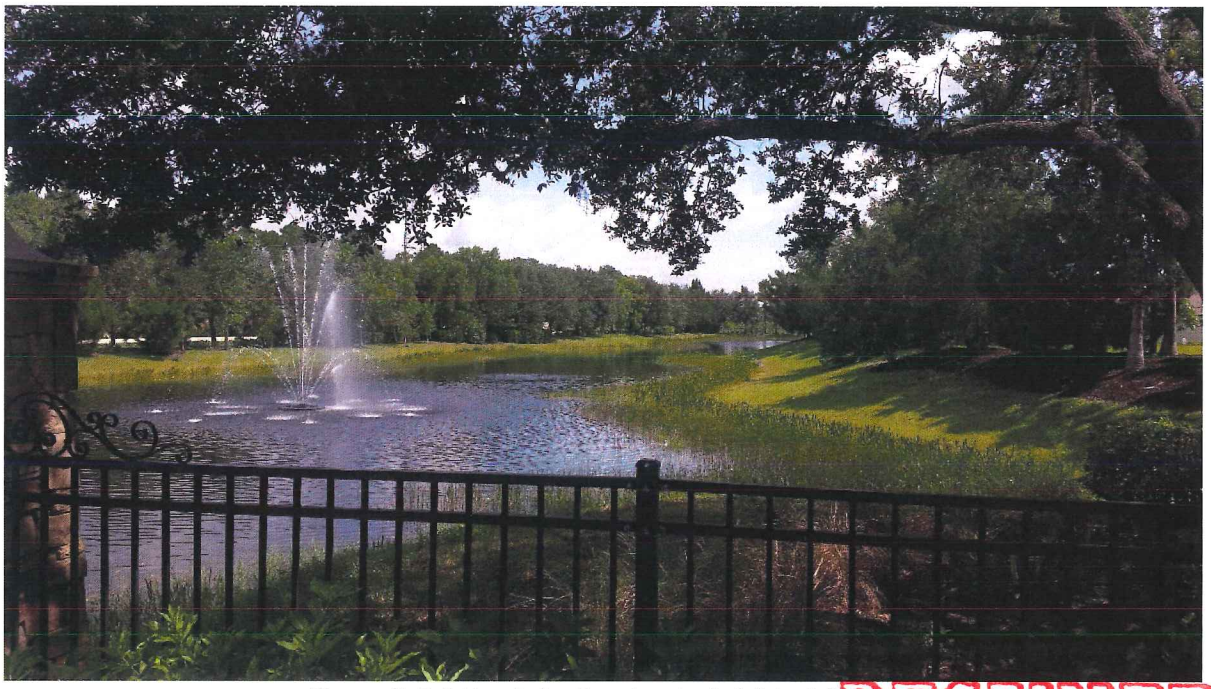


Figure 6. Existing Lake Constructed at 4 to 1 Slope

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Deviation (18) seeks relief from LDC Sec. 10-418(2)c. which requires a planted littoral shelf to be a minimum of 20 feet wide to allow a shelf that is 12 feet wide and extends the length of the surface water management lake.

Justification: This deviation is requested in support the 4:1 lake bank slope of Deviation 17. The proposed cross section included on Sheet X-108 of the Master Concept Plan demonstrates that a Planted Littoral Shelf will be provided behind all of the residential units along the lake bank. The applicant is committing to providing all of the required plantings along more than 25% of the shoreline but is requesting relief with regarding to the width of the shelf. The additional location of the littoral shelf along the entire shoreline will provide additional stabilization to the lake bank, which is requested to be a 4:1 slope and will enhance the stormwater management lakes yet to be constructed within the planned development. Providing a Planted Littoral Shelf behind all of the residential lots will increase the total amount of required littoral plantings as well as the shelf area for the lakes to be constructed in the remainder of Phase 2 and Phase 3. These additional plantings will reduce the flow velocity of and rainwater falling on the 4 to 1 slope waterward of the proposed "kicker swale" discussed in Deviation 17 thereby ameliorating concerns regarding erosion of the lake bank. This is consistent with the intent of Lee Plan Policies 61.3.11 and 61.3.14 which require runoff to be routed to reduce flow velocity and prevent erosion. Furthermore the increases are of the planted littoral shelf with the plantings will promote wildlife habitat and foraging area as encouraged by Lee Plan Policy 107.10.3. The additional stabilization provided by the proposed cross-section and additional littoral plantings will continue to maintain public health, safety and welfare within the Portico Subdivision.

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www.morris-depew.com

Portico Planned Development Amendment

Residential Property Development Regulations

Land Uses	Min Lot Area (SF)	Min Lot Width (FT)	Min Lot Depth (FT)	Min ~~Front~~ Street Setback (FT)	Min Side Setback (FT)	Min Rear Lot Setback (FT)	Min Setback from Water Body (FT)	Max Building Height (FT)	Max Lot Coverage (%)
Single-Family	5,500	50	110	20	5	10	0	35	60
Single-Family abutting Lakes	~~3,600~~4,500	50	90	20	5	0	0	35	60
Two-Family Attached	3,300	30	110	20	0 or 5	10	0	45	60
Two-Family Attached Abutting Lakes	2,700	30	90	20	0 or 5	0	0	45	60
Townhouse	2,220	20	110	20	0 or 5	10	20	45	60
Clubhouse/Amenity Sites	6,500	50	110	20	10	20	20	50	60

Notes:
The above Property Development Regulations are subject to any Deviations previously approved by Z-04-080 or requested by the current amendment.

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Portico

Residential Planned Development Amendment

Schedule of Uses

Residential Tracts

ACCESSORY USES AND STRUCTURES
COMMUNICATION FACILITY, WIRELESS
DWELLING UNITS:
- SINGLE-FAMILY
- TWO FAMILY ATTACHED
- TOWNHOUSE

ENTRANCE GATES, AND GATEHOUSE
ESSENTIAL SERVICES
ESSENTIAL SERVICE FACILITIES - GROUP I ONLY
EXCAVATION, WATER RETENTION
FENCES, WALLS
HOME OCCUPATION
MODELS:
- MODEL DISPLAY CENTER
- MODEL HOME
- MODEL UNIT

PARKING LOT, ACCESSORY - TO A MODEL DISPLAY CENTER, HOME OR UNIT ONLY
REAL ESTATE SALES
RECREATION FACILITIES, PERSONAL
SIGNS
TEMPORARY USES - TEMPORARY SALES, TEMPORARY CONSTRUCTION

Residential Amenities

ACCESSORY USES AND STRUCTURES
ADMINISTRATIVE OFFICES
COMMUNICATION FACILITY, WIRELESS
CONSUMPTION ON PREMISES
CLUBS, CLUBHOUSE - PRIVATE
~~DOCKS, FISHING PIERS~~
ESSENTIAL SERVICES
ESSENTIAL SERVICE FACILITIES - GROUP I ONLY
EXCAVATION, WATER RETENTION
FENCES, WALLS
FOOD AND BEVERAGE SERVICES
PARKING LOT, ACCESSORY
PERSONAL SERVICES - GROUP I

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REAL ESTATE SALES
RECREATIONAL FACILITIES, PRIVATE ON SITE
STORAGE, INDOORS
TEMPORARY USES - TEMPORARY SALES, TEMPORARY CONSTRUCTION

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 36-05388-P
DATE ISSUED: SEPTEMBER 14, 2005

FORM #0145
Rev. 08/95

PERMITTEE: TAYLOR WOODROW COMMUNITIES OF PORTICO, LLC
(PORTICO)
877 EXECUTIVE CENTER DRIVE WEST STE 20.
ST PETERSBURG, FL 33702

PROJECT DESCRIPTION: CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING A 589.1 ACRE RESIDENTIAL DEVELOPMENT KNOWN AS PORTICO, WITH DISCHARGE TO THE WATERS OF THE CALOOSAHATCHEE RIVER VIA HICKEY CREEK AND AN FPL EASEMENT CONVEYANCE SYSTEM AND OFFSITE WETLANDS VIA ONSITE WETLANDS.

PROJECT LOCATION: LEE COUNTY, SECTION 33,34 TWP 43S RGE 26E

PERMIT DURATION: See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit is issued pursuant to Application No. 041222-23, dated November 30, 2004. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, F.S, and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.351(1), (2), and (4), F.A.C.

This Permit shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and the Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit. All activities authorized by this Permit shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:

SEE PAGES 2 - 6 OF 9 (36 SPECIAL CONDITIONS).
SEE PAGES 7 - 9 OF 9 (19 GENERAL CONDITIONS).

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

On ORIGINAL SIGNED BY:
By ELIZABETH VEGUILLA
DEPUTY CLERK

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SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on September 14, 2010.

2. Operation of the surface water management system shall be the responsibility of PORTICO MASTER PROPERTY OWNERS ASSOCIATION, INC. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.

3. Discharge Facilities:

Basin: BASIN A, Structure: CS-A1

1-36" W X 16" H RECTANGULAR ORIFICE with invert at elev. 11.5' NGVD.
1-36" W X 79" L drop inlet with crest at elev. 14.5' NGVD.

Receiving body : Onsite Wetlands
Control elev : 11.5 feet NGVD.

Basin: BASIN A, Structure: CS-A2

1-18" W X 14" H RECTANGULAR ORIFICE with invert at elev. 11.5' NGVD.
1-36" W X 54" L drop inlet with crest at elev. 14.5' NGVD.

Receiving body : Onsite Wetlands
Control elev : 11.5 feet NGVD.

Basin: BASIN B, Structure: CS-B1

1-14" W X 4" H RECTANGULAR ORIFICE with invert at elev. 14' NGVD.
1-24" W X 37" L drop inlet with crest at elev. 17.3' NGVD.

Receiving body : BASIN A
Control elev : 14 feet NGVD.

Basin: BASIN C, Structure: CS-C1

1-3" dia. CIRCULAR ORIFICE with invert at elev. 14.5' NGVD.
1-24" W X 37" L drop inlet with crest at elev. 17.2' NGVD.

Receiving body : BASIN A
Control elev : 14.5 feet NGVD.

Basin: BASIN C, Structure: CS-C2

1-79" W X 36" H RECTANGULAR ORIFICE with invert at elev. 17.2' NGVD.
1-40" W X 7" H RECTANGULAR ORIFICE with invert at elev. 14.5' NGVD.

Receiving body : Hawk's Haven
Control elev : 14.5 feet NGVD.

4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.

5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.

6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be

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necessary.

7. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.

8. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.

9. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.

10. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.

11. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.

12. Minimum building floor elevation:
    BASIN A - 15.60 feet NGVD.
    BASIN B - 18.10 feet NGVD.
    BASIN C - 18.40 feet NGVD.

13. Minimum road crown elevation:
    BASIN A - 13.50 feet NGVD.
    BASIN B - 15.90 feet NGVD.
    BASIN C - 16.50 feet NGVD.

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14. Minimum parking lot elevation:
    BASIN A - 13.50 feet NGVD.
    BASIN B - 15.90 feet NGVD.
    BASIN C - 16.50 feet NGVD.

15. The Permittee shall utilize the criteria contained in the Construction Pollution Prevention Plan (Exhibit Nos. 4.0-4.9) and on the applicable approved construction drawings for the duration of the projects construction activities.

16. The Urban Stormwater Management Program (Exhibit Nos. 5.0-5.5) shall be included as part of the Property Owners Association Documents prior to being recorded. Prior to recording of the Property Owners Association Documents the amended documents shall be submitted to the Enforcement and Compliance section at the Lower West Coast Service Center for approval.

17. Exhibit Nos. 4.0-4.9 and 5.0-5.5 are incorporated by reference and shall be retained in the permit file.

18. The permittee shall retain the services of a professional archaeologist and perform a Phase II archeological investigation on the Sixteen Palms site, 8LL2329 (proposed to be impacted), as requested in the June 28, 2005 letter from the Department of State, Division of Historical Resources (Exhibit 3.9). If historical/archaeological artifacts are discovered, site alteration activities shall be postponed until such time as the Florida Department of State, Division of Historical Resources grants authorization to commence work.

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19. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

20. All contractors must be provided with a copy of the staff report and permit conditions prior to the commencement of construction. The permittee is responsible for ensuring that all contractors adhere to the project construction details and methods indicated on the attached permit Exhibits and described herein.

21. The permittee and all designated contractors shall adhere to all project and mitigation construction details and methodology indicated on the enclosed permit Exhibits and described herein.

22. Prior to the commencement of construction, the permittee shall conduct a pre-construction meeting with field representatives, contractors and District staff. The purpose of the meeting will be to discuss construction methods and sequencing [including the type and location of turbidity and erosion controls to be implemented during construction, mobilization and staging of contractor equipment, construction dewatering, coordination with other entities on adjacent construction projects, wetland/buffer protection methods, endangered species protection, etc.] with the permittee and contractors. The permittee shall contact District Environmental Resource Compliance staff from the Lower West Coast Service Center at 239-338-2929 to schedule the pre-construction meeting.

23. Permanent physical markers designating the preserve status of the wetland preservation areas and buffer zones shall be placed as shown in the cross-sections on engineering plan shee 17. The markers shall be maintained in perpetuity.

24. Prior to the commencement of construction, the perimeter of protected wetlands, buffer zones, upland preservation areas and conservation areas shall be staked/roped/fenced to prevent encroachment into the protected areas. The permittee shall notify the District's Environmental Resource Compliance staff in writing upon completion of staking/roping/fencing and schedule an inspection of this work. The staking/roping/fencing shall be subject to District staff approval. The permittee shall modify the staking/roping/fencing if District staff determines that it is insufficient or is not in conformance with the intent of this permit. <The staking/roping/fencing shall remain in place until all adjacent construction activities are complete.

25. Endangered species, threatened species and/or species of special concern have been observed onsite and/or the project contains suitable habitat for these species. It shall be the permittee's responsibility to coordinate with the Florida Fish and Wildlife Conservation Commission and/or the U.S. Fish and Wildlife Service for appropriate guidance recommendations and/or necessary permits to avoid impacts to listed species.

26. Prior to the commencement of construction and in conformance with the work schedule in Exhibit 3.5, the permittee shall provide an original bond in the amount of $126,435.10 to ensure the permittee's financial ability and commitment to complete the proposed mitigation, monitoring and maintenance plan as shown on Exhibit No. 3.3 and 3.4. The bond shall be in substantial conformance with Exhibit No. 3.6. When a performance bond is established, the permittee shall also establish a standby trust

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fund for deposit of all payments under bond. The bond shall remain in effect for the entire period of the mitigation and monitoring program. Notification of the District by the financial institution that the bond will not be renewed or is no longer in effect shall constitute non-compliance with the permit.

27. Wetland preservation/mitigation areas, upland buffer zones and upland preservation areas shall be dedicated as conservation and common areas in the deed restrictions as well as on the plat if the project will be platted. Restrictions for use of the conservation/ common areas shall stipulate:

The wetland preservation/mitigation areas, upland buffer zones, and upland preservation areas are hereby dedicated as conservation and common areas. The conservation/common areas shall be the perpetual responsibility of the Portico homeowner's association and may in no way be altered from their natural or permitted state with the exception of permitted restoration activities. Activities prohibited within the conservation areas include, but are not limited to: construction or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation - with the exception of exotic/nuisance vegetation removal; excavation, dredging, or removal of soil material; diking or fencing; and any other activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

Copies of recorded documents shall be submitted to the District's Environmental Resource Compliance staff concurrently with engineering certification of construction completion.

28. Prior to the commencement of construction resulting in wetland impacts and in accordance with the work schedule in Exhibit No. 3.5, the permittee shall submit two certified copies of the recorded conservation easement for the mitigation area and associated buffers. The data should also be supplied in a digital CAD (.dxf) or GIS (ESRI Coverage) format. The file should be in the Florida State Plane coordinate system, East Zone (3601) with a data datum of NAD83, HARN with the map units in feet. This data should reside on a CD or floppy disk and be submitted to the District's Environmental Resource Compliance Division in the service area office where the application was submitted.

The recorded easement shall be in substantial conformance with Exhibit 3.7. Any proposed modifications to the approved form must receive prior written consent from the District. The easement must be free of encumbrances or interests in the easement which the District determines are contrary to the intent of the easement. In the event it is later determined that there are encumbrances or interests in the easement which the District determines are contrary to the intent of the easement, the permittee shall be required to provide release or subordination of such encumbrances or interests.

29. An average 25' wide, minimum 15', buffer of undisturbed upland vegetation shall be maintained between the proposed development and existing wetlands. Buffers shall be staked and roped and District environmental staff notified for inspection prior to clearing..

30. A mitigation program for Portico shall be implemented in accordance with Exhibit Numbers 3.3 and 3.4. The permittee shall create 4.75 acres of freshwater marsh, preserve 23.93 acres of wetlands, and preserve and enhance 5.53 acres of upland compensation.

31. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to onsite or offsite wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.

32. Permanent physical markers designating the preserve status of the wetland preservation areas and buffer zones shall be placed at the intersection of the buffer and each lot line. These markers shall be maintained in perpetuity.

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33. A maintenance program shall be implemented in accordance with Exhibit No. 3.4 for the preserved/enhanced/created wetland and upland) areas on a regular basis to ensure the integrity and viability of those areas as permitted. Maintenance shall be conducted in perpetuity to ensure that the conservation areas are maintained free from Category 1 exotic vegetation (as defined by the Florida Exotic Pest Plant Council at the time of permit issuance) immediately following a maintenance activity. Maintenance in perpetuity shall also insure that conservation areas, including buffers, maintain the species and coverage of native, desirable vegetation specified in the permit. Coverage of exotic and nuisance plant species shall not exceed 5% of total cover between maintenance activities. In addition, the permittee shall manage the conservation areas such that exotic/nuisance plant species do not dominate any one section of those areas.

34. A monitoring program shall be implemented in accordance with Exhibit No. 3.3A and 3.4. The monitoring program shall extend for a period of 5 years with annual reports submitted to District staff. At the end of the first monitoring period the mitigation area shall contain an 80% survival of planted vegetation. The 80% survival rate shall be maintained throughout the remainder of the monitoring program, with replanting as necessary. If native wetland, transitional, and upland species do not achieve an 80% coverage within the initial two years of the monitoring program, native species shall be planted in accordance with the maintenance program. At the end of the 5 year monitoring program the entire mitigation area shall contain an 80% survival of planted vegetation and an 80% coverage of desirable obligate and facultative wetland species.

35. Success of the mitigation activities proposed within the marsh creation areas is heavily dependent on proper grading to achieve the design ground elevations necessary to recruit the expected vegetation or to sustain the proper hydrology for the targeted vegetation communities. The permittee shall submit as-built topography of the proposed mitigation area(s) prior to planting. The permittee shall correct any deficiencies in the project grade within 14 days of being notified of such deficiencies by District staff.

36. Activities associated with the implementation of the mitigation, monitoring and maintenance plan(s) shall be completed in accordance with the work schedule attached as Exhibit No. 3.5. Any deviation from these time frames will require prior approval from the District's Environmental Resource Compliance staff. Such requests must be made in writing and shall include (1) reason for the change, (2) proposed start/finish and/or completion dates; and (3) progress report on the status of the project development or mitigation effort.

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GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373. F.S.

2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.

5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.

6. Within 30 days after completion of construction of the permitted activity, the permitee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.

7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request

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for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.

9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..

12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.

14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the

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permit.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.

16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.

19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

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40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows.

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to chapter 40-E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit, or
2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

Specific authority 373.044, 373.113 F.S. Law Implemented 373.413, 373.416, 373.419, 373.426 F.S. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4/20/94, Amended 7-1-86, 4/20/94, 10-3-95

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NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

Petition for Administrative Proceedings

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

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any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or

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publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;

(2) a statement of the preliminary agency action;

(3) an explanation of how the person's substantial interests will be affected by the agency determination; and

(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read:
Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, telephone number and any facsimile number of the petitioner;

(c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

(d) the applicable rule or portion of the rule;

(e) the citation to the statue the rule is implementing;

(f) the type of action requested;

(g) the specific facts that demonstrate a substantial hardship or violation of principals of fairness that would justify a waiver or variance for the petitioner;

(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and

b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

28-106.201 INITIATION OF PROCEEDINGS
(INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

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28-106.301 INITIATION OF PROCEEDINGS
(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(e) A demand for relief.

28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL

(3) Requests for hearing filed in accordance with this rule shall include:

(a) The name and address of the party making the request, for purposes of service;

(b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and

(c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

(a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

28-107.005 EMERGENCY ACTION

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) the 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57. and 120.60, F.S.

40E-1.611 EMERGENCY ACTION

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

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