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COMMUNITY DEVELOPMENT
REC'D SECOND FLOOR

Reply to
Russell P. Schropp
Direct Fax Number 239.344.1535
Direct Dial Number 239.344.1280
E-Mail: russell.schropp@henlaw.com

October 2, 2009

Donna Marie Collins
Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902-0398

Matt Noble, AICP
Community Development
P.O. Box 398
Fort Myers, FL 33902-0398

Re: Babcock Ranch, CPA 2006-08

Dear Donna Marie and Matt:

As a follow-up to the County Commission's action of September 23 continuing the public hearing on the above-referenced plan amendment until October 28, this letter will simply confirm that Babcock Property Holdings LLC ("Babcock") is committed to fulfilling its obligations under the Community Planning Agreement of May 23, 2006 ("the Agreement"), and the Memorandum of Understanding dated September 23, 2008 ("the MOU"). Babcock has proceeded in accordance with the Agreement and MOU, and has worked diligently with Lee County to implement the intent of these prior agreements. Towards that end, Babcock would be happy to discuss with you the potential changes to the plan amendment raised by Commissioner Hall on September 23.

On a related note, Syd Kitson and other members of the Babcock team met recently with representatives of the various community planning groups from the Alva, East Lee County, and Bayshore areas to discuss the pending plan amendment. One of the issues discussed was the possibility of deleting Tables 2(c) and 2(d) from the plan amendment, as well as any maps that graphically depict these improvements that are included in the plan amendment or back-up materials. These tables contain a list of potential roadway improvements that may be needed as Babcock develops, but as recent clarifications to the plan amendment have indicated there is not a definite commitment on the part of the County to include any of these improvements on Map 3A or the CIE until an actual funding mechanism is in place. Further, as staff noted at the recent transmittal hearing, the list is merely illustrative and the full range of options available to address traffic impacts associated with Babcock are not limited or constrained by these tables. Accordingly, it would appear that these tables can be removed from the plan amendment without impacting its intent. Mr. Kitson indicated to the community planning groups that he would support and encourage the removal of these tables from the plan amendment. Corresponding changes to the text of the

Donna Marie Collins

October 2, 2009

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proposed policies will be required to reflect the deletion of these tables. It would be our understanding, of course, that processing of this plan amendment without these tables will still satisfy Babcock's obligations and commitments under the Agreement and the MOU.

Additionally, Mr. Kitson discussed with the community planning groups the "East-West Connector" and the groups' desire to see this potential improvement prioritized. During the discussion, it appeared that there was a concern with regard to references in the Staff Report that reflect that this Connector may be located in Lee County when, in fact, the corridor and alignment have not yet been ascertained. For example, in Tables 2(c) and 2(d), the Connector is referenced as being "near County line." On page 13 in the Environmental Considerations section, there is a reference to the east-west corridor "close to the Lee/Charlotte County line." Other such references may also exist in the Staff Report. Again, Babcock would support and encourage the removal of any reference to the location of the East-West Connector in the plan amendment or Staff Report.

These changes, and possibly others, may address objections and comments raised by members of the public during the transmittal hearing on September 23. We would request the opportunity to discuss this with you at the earliest opportunity.

Please advise how you would like to proceed. Thank you.

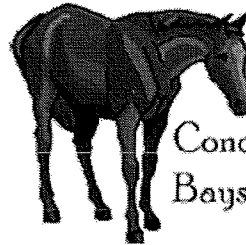
Sincerely,



Russell P. Schropp

/rs

cc: Lee County Commissioners
Syd Kitson
David Owen
Mary Gibbs
Paul O'Connor
David Loveland
Tom Danahy
Erica Chutkan
Steve Webb
Joe Grubbs
Steve Leung
Jim Green
Ruby Daniels
Matt Smith



Concerned Citizens of
Bayshore Community, Inc

October 7, 2009

Commissioner Tammy Hall
Lee County Board of County Commissioners
Fort Myers FL 33902-0398

Dear Commissioner Hall,

As you know, the proposed Comp Plan amendment for the BRC (Babcock Ranch Community) is a controversial document. After the public hearings, Syd Kitson requested that the Alva, Bayshore and East Lee County community leaders meet with him to find a way forward. At that meeting we agreed upon a revised Comp Plan amendment that is more acceptable to all parties.

We request that the following items be removed from the proposed Comp Plan amendment:

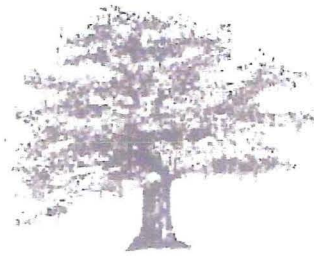
Tables 2c and 2d that contain the lists of roads
Any reference to specific roads
Any reference to specific road alignments or locations

With the removal of these items, the Comp Plan amendment will only be a description of "The Process" rather than a road plan. We will send a copy of this letter to all the persons listed below. Please distribute a copy to anyone else that should have this letter. We want to insure that all interested parties are informed.

Thank you for your leadership on this issue.

Matt Smith
President
Concerned Citizens of Bayshore Community

cc: Syd Kitson
Steve Webb
Gary Nelson
Ed Kimball
Ruby Daniels
Jim Green
All Lee County Commissioners
Dave Loveland
Paul O'Connor



ALVA

A Living Vision of Alva

COMMUNITY DEVELOPMENT

File CPA 2006-0
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Alva Inc. is dedicated to preserving the tranquility and beauty of Alva
P O. Box 2022, Alva FL 33920

October 22, 2009

The Honorable Frank Mann
District Five Commissioner
P. O. Box 398
Fort Myers FL 33902

Dear Commissioner Mann:

Thank you for your diligence and attention to the controversial Babcock-sponsored comprehensive plan amendment.

We believe any "Babcock Road Plan" accepted by Lee County should include the highest priority design criteria of minimizing any road impact in the rural areas of east Lee County, and any proposals should be evaluated with overwhelming weight given to meeting this criteria.

We have heard testimony from the County Attorney this amendment is necessary to "establish the process" of deciding where roads will be constructed or expanded in either Charlotte or Lee County. While we do not accept this testimony at face value, neither do we have the expertise to assess it

Further County Attorney testimony suggested the County met its commitment to Babcock (independent of any amendment passage) when the BOCC recently heard the proposed amendment, and that Babcock's financial obligation to roadbuilding remains in full force. These statements argue against any Lee obligation to adopt this plan amendment

We understand from recent meetings, discussions and correspondence there exists a general accord by most interested parties and staff to modify the proposed amendment to delete any maps, tables or mention of specific road projects within Lee County, thereby not predisposing the process outcome. With the above changes, Alva Inc. withdraws its stated objection if you deem adoption is necessary for "the process" to occur.

Thank you for your continuing efforts to preserve and enhance our quality of life.

Sincerely,

Ruby Daniels
President

Cc: Commissioner Bigelow
Commissioner Hall
Commissioner Janes
Commissioner Judah
Paul O'Connor
David Owen Esquire
Russell Schröpp Esquire

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), entered into this ____ day of _____, 2008, by and between: BABCOCK PROPERTY HOLDINGS, LLC (hereinafter "Developer"), a Delaware liability company, whose address for purposes of this MOU is 9055 Ibis Boulevard, West Palm Beach, Florida 33412; the BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT (hereinafter "ISD"), an independent special district of the State of Florida created pursuant to Chapter 2007-306, Laws of Florida, whose address for purposes of this MOU is _____; and LEE COUNTY, a political subdivision of the State of Florida (hereinafter, "County"), whose mailing address for purposes of this MOU is P.O. Box 398, Fort Myers, FL 33902-0398 (Developer, ISD and County being hereinafter referred to as "the Parties").

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Additional Applications for Incremental Development Approval.

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

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

3. FULLFILLMENT OF COMMUNITY PLANNING AGREEMENT

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

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

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

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

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

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

BABCOCK PROPERTY HOLDINGS, LLC,
a Delaware limited liability company

Witness Signature

By: _____
Tom Danahy, President

Witness Name

Date: _____

Witness Signature

Witness Name

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

Witness Signature

Witness Name

Witness Signature

Witness Name

By: _____

(Print or Type Name and Title)

Date: _____

LEE COUNTY, a political subdivision of
the State of Florida

By: _____

Ray Judah, Chairman

Date: _____

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

(Type or Print Name)

APPROVED AS TO FORM:

Assistant Lee County Attorney