

Exhibit E

Siesta V Administrative Amendment (ADD2024-00060)

July 11, 2024
Resubmission Package

REQUEST NARRATIVE

APPLICATION TO AMEND A PLANNED DEVELOPMENT

REQUEST NARRATIVE

(Revised July 11, 2024)

Siesta V is seeking an amendment to its RPD Resolution Z-02-049 and the associated Master Concept Plan (“MCP”) attached thereto as Exhibit C. These changes will make the project consistent with Florida Department of Environmental Protection (“DEP”) - approved modifications to its Environmental Resource Permit governing the project. The changes requested are in accordance with a pending settlement of an administrative challenge to a DEP Environmental Resource Permit modification by Petitioners John Boucher¹ and Terry Carlson, two landowners in the Siesta Isles peninsula east of the project.

The attached **Exhibit A** and the revised Master Concept Plan show the changes proposed to the Master Concept Plan attached to Resolution Z-02-049. The changes are summarized below:

1. Elimination of the 11-slip multi-family docking facility in Pelican Bay.
2. Elimination of 4 lots and two shared docks along the shore of Pelican Bay.
3. A reduction in project density from 41 single-family dwelling units to 36 single family dwelling units.
4. Elimination of roadway and utilities for the roadway serving the now-eliminated lots, two docks, and 11 slip docking facility, formerly known as “Northern Harbor Lane.”
5. Addition of 4.06 acres of conservation land (including the formerly proposed upland lots and the privately-owned submerged lands where the 11-slip docking facility and the single-family docks would have been located.

¹ Mr. Boucher recently sold his home.

6. Planting ± 250 lineal feet of mangroves along the waterfront of the road in front of the single family lots in the direct sight of the Petitioners' homes (Lots 15-18) in accordance with the Department of Environmental Protection's requirements for planting and monitoring in the Environmental Resource Permit.
7. Relocation of 3 of the 4 lots along Pelican Bay being eliminated to the waterfront of Estero Bay, in an area where an "elevated roadway/bridge of $100 \pm$ lineal feet" is required by Condition B. 4. of Resolution Z-02-049 and as shown on the present MCP. Attached as **Exhibit B** is an analysis showing there is no flushing occurring in this area, therefore a bridge would serve no purpose and its elimination is being requested. The bridge was never required in any version of FDEP permit for the project, dating back to 1998.

Building Height

We also request certain "clean-up" amendments and a clarification to the height restriction in Condition B.2.b. of the Zoning Resolution (see attached redline of resolution).

On the height condition, a review of the Hearing Examiner's recommendation on the RPD request (Case No. DCI2000-00004) shows Siesta V was proposing a building height of 35 feet described in its presentation as, "the same building height that is permitted in the RS-1 District and in the Old Pelican Bay RPD." (Page 10) Pam Houck, Director of Lee County Zoning, recommended a 25-foot height limitation, "measuring the 25-foot-height to the top of the wall, which doesn't take the massing of the roof into account." (Page 18)

In her discussion, the Hearing Examiner stated:

The Staff wanted to limit the homes to 25 feet in height and the Applicant wanted to be allowed to go to 35 feet. . . . Without any evidence to support the Staff's position, and taking note of the fact that the height limitations of the surrounding residential uses is also 35 feet, *it would be inequitable to hold the Applicant to a standard that is not required of the other dwelling units in the area.* Therefore, the Applicant's request for 35 feet is what is being recommended in the conditions.(Page 6)

Section III A.2.b, Conditions, the Hearing Examiner's Recommendation provided:

“Maximum 35 feet above minimum required flood elevation as **measured from lowest habitable floor to the top of exterior wall** with exclusion of roof structure.”

This is a building height higher than what was requested by the Applicant, as it mixes Pam Houck's concept of measuring the height only to the top of the exterior wall with Siesta V's request for 35 feet height as measured in the LDC. Ultimately, Resolution Z-02-049, in Section III.A.2.b., conditioned building height as simply “Maximum 35 feet above minimum required flood elevation,” requiring the clarification requested.

Lee County's Land Development Code provides a method for measurement of height of a building or structure. Section 34-2171(b), which was in place in 2002, applies in the Coastal Building Zone, which includes all of the Siesta V project area. This section states: “height of a building is the vertical distance measured from the lowest minimum habitable floor elevation for which a building permit may be issued to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and the ridge of gable, hip, shed and gambrel roofs.”

In September of 2023, Lee County amended its height limitations via Section 34-2172(a), “Exceptions to height limitations for resiliency,” which provides:

- (a) Notwithstanding any other provision of this Code, buildings within a coastal high hazard area, as defined in Section 6-479 (“V Zones”), or within a “Coastal A Zone,” as defined by the Florida Building Code, may increase the height of the lowest minimum habitable floor for which a building permit may be issued by a maximum of four (4) feet and exceed the applicable height limitations established in this code proportionally without deviation or variance approval from to provide for increased resiliency and protection from natural disasters.

Therefore, we propose amending the height condition to read that the maximum building height of 35 feet would be measured in accordance with the present Land Development Code.

Building Height: Maximum 35 feet as measured by the Land Development Code.

ANALYSIS OF ADMINISTRATIVE AMENDMENT CRITERIA:

Section 34-174(i)(1) states that the Director of the Department of Community Development is authorized to administratively approve an amendment to a planned development. Upon findings that the request:

- a. Does not increase height, density or intensity of the development, except as permitted in Chapter 2.

Response: The proposed amendment decreases the density of the development (intensity is a measurement of non-residential uses and thus, does not apply), and does not increase the height merely clarifying the measurement under the prior and current Lee County regulations.

- b. Does not result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;

Response: While the number of dwelling units is reduced from 41 to 36, there is no substantial underutilization of public infrastructure committed to the support of the development resulting from these changes.

- c. Does not result in a reduction of total open space provided on the Master Concept Plan by more than 10 percent;

Response: The proposed project results in an increase in open space by adding to the area designated as conservation area in favor of the Florida Department of Environmental Protection.

- d. Does not decrease the amount of indigenous native vegetation preservation or open space areas below the amount required by the Code;

Response: There is an increase of 4.06 acres of conservation area as the result of this amendment and the deletion of building lots, docks and roadway infrastructure.

- e. If changes to the buffer or landscaping areas are proposed, equivalent or better (by comparison with the approved Master Concept Plan) landscaping or buffering is provided;

Response: The only change to the buffer or landscaping areas being proposed is the additional planting of ± 250 linear feet of mangroves where no mangroves exist.

- f. Does not adversely impact surrounding land uses; and

Response: The amendment favorably affects surrounding land uses by shifting the development away from the neighboring residential areas in the Siesta Isles subdivisions including adding the mangrove buffer per the settlement agreement with the Petitioners in the DEP administrative appeal.

- g. Is consistent with all applicable provisions of the Lee Plan and land development regulations in effect at the time of the amendment request.

Response: The proposed amendment is consistent with land development regulations and the Lee Plan. The project remains consistent with Lee Plan Policy 1.5.1 and Policy 101.1.2. as it increases the amount of wetland conservation area associated with the project, which will be perpetually protected, and decreases the amount of wetland impact by the project with the elimination of a road and building lots. The proposed amendment also furthers Objective 124.1 and Policy 124.1.1 for the same reasons. Incorporating the terms and conditions of the DEP permit by this amendment furthers Policy 124.1.2 (Paragraph 1.).

The request is also consistent with Lee Plan Policy 124.1.2 (Paragraph 4.) as clustering of the lots has resulted in an increase of 4.1 acres of conservation area that would otherwise have been affected by a road, four lots and a multi-slip docking facility.

Siesta V Administrative Amendment (ADD2024-00060)

July 11, 2024
Resubmission Package

AMENDMENT TO DEED OF CONSERVATION EASEMENT 4.06
ACRES PER SETTLEMENT AGREEMENT

Prepared by:

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Return original or certified recorded document to:

Dept. of Environmental Protection
2295 Victoria Avenue
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Fort Myers, FL 33901
239-344-5600

Amendment to Deed of Conservation Easement Standard With Passive Recreational Uses

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT (this "Amendment") is given this _____ day of _____, 2024, by **Charles R. Meador, Jr., not individually, but as Trustee under the provisions of a Land Trust Agreement effective March 8, 1995, and known as the Siesta V Land Trust** ("Grantor") whose mailing address is c/o Mark A Ebelini, Knott Ebelini Hart, 1625 Hendry Street, Suite 301, Fort Myers FL 33901, to the **Florida Department of Environmental Protection** ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the "Conservation Easement Area" (as hereinafter defined); the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, on July 24, 2020, Grantor executed a "**Deed of Conservation Easement Standard With Passive Recreational Uses**" in favor of the Grantee, which was recorded as **Official Records Instrument No. 2020000204375**, Public Records of Lee County, Florida (the "Conservation Easement") ;

WHEREAS, Grantor has sought a modification to Permit No. 36-0157404 (the "Permit Modification") referenced in the Conservation Easement; and

WHEREAS, Grantor, in consideration of the consent granted by the Permit Modification, is agreeable to adding to the land to be held subject to the Conservation Easement by this Amendment; and

WHEREAS, by this Amendment, the Grantor, has agreed to subject an additional 4.06 ± acre parcel of its land located in Lee County, Florida, described and depicted on Exhibit "A" attached hereto, to the Conservation Easement ("**Tract IIIA**"), and

WHEREAS, Grantor grants this Amendment pursuant to the settlement agreement of a Petition for Formal Administrative Hearing, Division of Administrative Hearings Case Number 22-2096, and the Permit Modification; and

WHEREAS, all of the terms and conditions of the Conservation Easement shall apply to Tract IIIA.

NOW, THEREFORE, in consideration of the issuance of the Permit Modification, together with other good and valuable consideration provided to the Grantor the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes a perpetual

Conservation Easement for and in favor of the Grantee upon Tract III described on Exhibit "A" which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever. All terms and conditions of the Conservation Easement shall apply to Tract IIIA, the terms of which are hereby ratified herein by this reference.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions, and purposes imposed on Tract IIA shall be binding upon Grantor, and its successors and assigns, and shall continue as a servitude running in perpetuity with Tract IIIA.

Grantor hereby covenants with Grantee that Grantor is lawfully seized of Tract IIIA in fee simple; that the Tract IIIA is free and clear of all encumbrances that are inconsistent with the terms of the Conservation Easement; that there are no mortgages or liens on Tract IIIA; that Grantor has good right and lawful authority to convey this conservation easement on Tract IIIA by this Amendment; and Grantor fully warrants and defends record title to Tract IIIA against the lawful claims of all persons whomsoever inconsistent with the terms of the conservation easement imposed hereby.

IN WITNESS WHEREOF, Charles R. Meador, Jr., not individually, but as Trustee under the provisions of a Land Trust Agreement effective March 8, 1995, and known as the Siesta V Land Trust ("Grantor") has hereunto set its authorized hand this _____ day of _____, 2024.

☐ A Florida corporation or ☒ Land Trust (choose one)

By: _____

(Signature)

Name: Charles R. Meador, Jr.

Title: Trustee

Signed, sealed and delivered in our presence as witnesses:

By: _____

(Signature)

Name: _____

(Print)

By: _____

(Signature)

Name: _____

(Print)

STATE OF FLORIDA
COUNTY OF LEE

On this _____ day of _____, 2024, before me by means of _____ physical presence or by _____ online notarization, the undersigned notary public, personally appeared Charles R. Meador, Jr., the person who subscribed to the foregoing instrument, as the Trustee of Siesta V Land Trust ☐ (corporation), a Florida corporation, or ☒ Land Trust (choose one) and acknowledged that he executed the same on behalf of said ☐ corporation, or ☒ Land Trust (choose one) and that he/she was duly authorized to do so. He is personally known to me _____ or has produced a _____ (state) driver's license as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

(Signature)

(Name)

My Commission Expires: _____

[ADDITIONAL CONSERVATION EASEMENT AREA – TRACT IIIA]

Barraco
and Associates, Inc.

www.barraco.net

Civil Engineers, Land Surveyors and Planners

**DESCRIPTION
(TRACT IIIA)**

Parcel in
Section 13, Township 46 South, Range 23 East
Lee County, Florida

A tract or parcel of land, lying in Section 13, Township 46 South, Range 23 East, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

COMMENCING at the Southwest corner of the record plat of "SIESTA ISLES UNIT NO. 4" as recorded in Plat Book 29, Page 107, Lee County Records, run N88°39'44"E along the Southerly line of said record plat for 197.00 feet; thence run S01°20'16"E for 97.75 feet to an intersection with the Southeasterly line of a Conservation Easement described in a deed recorded in Instrument No. 2020000173943, Lee County Records and the POINT OF BEGINNING.

From said Point of Beginning run N89°00'10"E for 254.11 feet; thence run S15°20'02"W for 527.47 feet to an intersection with Northwesterly line of lands described in deed recorded in Official Record Book 2781, Page 1575, Lee County records, also being known as Lots 83, 84, 85 and 86 of San Carlos Subdivision (Unrecorded); thence run S47°06'39"W along said Northwesterly line for 133.82 feet; thence run N56°48'46"W for 19.09 feet to a point on a non-tangent curve; thence run Northerly along an arc of a curve to the left of radius 66.50 feet (delta 65°16'07") (chord bearing N04°19'46"W) (chord 71.72 feet) for 75.75 feet to a point of tangency; thence run N36°57'50"W for 186.92 feet to a point of curvature; thence run Northwesterly along an arc of a curve to the left of radius 98.00 feet (delta 47°19'49") (chord bearing N60°37'44"W) (chord 78.67 feet) for 80.95 feet; thence run S44°42'49"W along a non-tangent line for 6.55 feet to a point on a non-tangent curve; thence run Westerly along an arc of a curve to the left of radius 93.00 feet (delta 46°38'30") (chord bearing S69°50'37"W) (chord 73.63 feet) for 75.71 feet to a point of tangency; thence run S46°31'22"W for 335.15 feet to an intersection with said Southeasterly line of said Conservation Easement; thence run along said Southeasterly line the following courses: N43°54'21"W for 17.24 feet; N13°45'20"W for 5.90 feet; N25°37'30"E for 18.46 feet; N42°37'08"E for 59.00 feet; N49°28'49"E for 133.17 feet; N49°34'26"E for 65.89 feet; N52°12'21"E for 74.31 feet; N37°23'49"E for 44.12 feet; N08°59'07"W for 37.03 feet; N34°19'56"W for 43.53 feet and N49°14'19"E for 345.36 feet to the POINT OF BEGINNING.

Containing 4.06 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (NAD1983)(NSRS 2011) and are based on the Southerly line of said record plat of "SIESTA ISLES UNIT NO. 4" to bear N88°39'44"E.

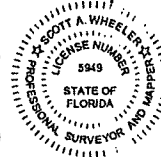
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by Scott A.

Wheeler, PSM

Date: 2023.08.25

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Scott A. Wheeler (For The Firm)
Professional Surveyor and Mapper
Florida Certificate No. 5949

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