

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050189

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt a resolution amending the Merchants Crossing DRI Development Order to eliminate the obligation to provide fire fighting equipment.

WHY ACTION IS NECESSARY: Florida Statutes requires Board approval of amendments to developments of regional impact.

WHAT ACTION ACCOMPLISHES: Amends the DRI Development Order for Merchants Crossing DRI through an expedited process in accordance with Florida Statutes and the Lee County Land Development Code.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # 4 **A 12 B**

3. MEETING DATE:

08-23-2005

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE §380.06(19)(e)(2)
 - ORDINANCE LDC §34-145(d)(1)c
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT County Attorney
 - C. DIVISION Zoning and Land Use
- BY: Dawn E. Perry-Lehnert
Assistant County Attorney

7. BACKGROUND:

The Merchants Crossing DRI was adopted by the Board of County Commissioners in October 1990. Since that time, the development order has been amended four times. On January 15, 2004, Merchants Crossing of North Fort Myers, Inc., filed an NOPC to amend Condition 11.D.1 to eliminate the requirement to provide certain fire fighting equipment.

(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>Empty</i>	OA	OM	RISK	GC	<i>2-10-05</i>
				<i>Empty</i>	<i>OK</i>	<i>2/9/05</i>	<i>OK</i>	<i>2/9/05</i>	

10. COMMISSION ACTION:

- APPROVED
 - DENIED
 - DEFERRED ON 02-22-05 - INDEFINITELY
 - OTHER
- ON 02-22-05

RECEIVED BY COUNTY ADMIN:	<i>[Signature]</i>
	<i>2/9/05</i>
	<i>3:30 pm</i>
COUNTY ADMIN	<i>[Signature]</i>
FORWARDED TO:	<i>[Signature]</i>
	<i>2/10/05</i>
	<i>1:26 pm</i>

Subject: Adopt a resolution amending the Merchants Crossing DRI Development Order to eliminate the obligation to provide fire fighting equipment.

At the time the initial DRI Development Order was approved, Merchants Crossing of North Fort Myers, Inc was required to purchase a 65-foot telesquirt fire truck or comparable equipment in the event a building permit was obtained from Lee County for any building over two stories in height. To satisfy an agreement between Merchants Crossing of North Fort Myers, Inc. and North Fort Myers Fire Protection District, Merchants crossing of North Fort Myers, Inc deposited \$36,000.00 in escrow with the North Fort Myers Fire Protection District at the time the original Development Order was issued. Merchants Crossing of North Fort Myers, Inc. and North Fort Myers Fire Protection District subsequently agreed that Merchants Crossing will not have to purchase a 65-foot telesquirt fire truck or comparable equipment for any building over two stories in height. Further, Merchants Crossing of North Fort Myers Fire protection District will return the \$36,000.00 escrow amount to Merchants Crossing of North Fort Myers, Inc. and that the North Fort Myers Fire Protection District would use the interest earned on the escrow account to pay the cost associated with obtaining an amendment to the DRI Development Order to remove the requirement to provide the 65-foot telesquirt or other equipment and to pay any remaining balance to the Lee County Emergency Workers Charitable Fund.

The North Fort Myers Fire District is amenable to removal of the Developer's obligation to provide a ladder truck (i.e. 65-foot telesquirt fire truck) in order to construct a building in excess of two-stories.

The Lee County Land Development Code states that after staff review and recommendation, certain amendments to DRI Development Orders may proceed directly to the Board of County Commissioners for consideration during a regular weekly Board meeting as part of the Administrative Agenda. The Board may adopt this amendment based upon the staff recommendation. Hearing Examiner review is not required.

Staff supports the proposed amendment to the DRI Development Order. The change will not create a likelihood of additional regional impact. Accordingly, staff recommends adoption of the attached resolution amending the Merchants Crossing Development Order.

Attachment:

1. Draft Resolution
2. Proposed Merchants Crossing DRI Development Order Amendment
3. Letter from Richard Pringle dated June 28, 2005

cc: Mary Gibbs, Director, DCD
Pam Houck, Director, Zoning Division
Bryan Kelner, Principal Planner, DCD
Richard W. Pringle, P.A. Strayhorn & Strayhorn, P.L.

RESOLUTION NO. ____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING THE MERCHANTS CROSSING DEVELOPMENT OF REGIONAL IMPACT.

WHEREAS, the Lee County Board of Commissioners adopted a DRI Development Order for the Merchants Crossing DRI on October 31, 1990 (DRI No. 7-8889-92); and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991, June 30, 1993, April 2, 1997, and April 30, 2001; and

WHEREAS, Merchants Crossing of North Fort Myers, Inc., filed a Notice of Proposed Change (NOPC) requesting amendment of Condition II.D.1.c to eliminate the requirement to provide certain fire fighting equipment; and

WHEREAS, the North Fort Myers Fire District is amenable to removal of the Developer's obligation to provide a ladder truck (i.e. 65-foot telesquirt fire truck) in order to construct a building in excess of two stories; and

WHEREAS, the Southwest Florida Regional Planning Council staff has opined that the amendment of the DRI development order approval to eliminate the obligation to provide fire fighting equipment as required by DRI Condition II.D.1.c, constitutes a minor change as contemplated by Florida Statutes §380.06(19)(e)(2); and

WHEREAS, the proposed changes to the Merchants Crossing DRI Development Order do not constitute a substantial deviation and qualify for expedited processing pursuant to Florida Statutes §380.06(19)(e)(2) and Land Development Code §34-145(d)(1)c.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

1. The above stated recitals are incorporated into this Resolution by reference.
2. The Merchants Crossing DRI Development Order is hereby amended in accordance with the attached codification of the Fifth Amendment of the Merchants Crossing DRI Development Order.
3. Certified copies of this Resolution and the revised DRI Development Order will be forwarded to the Southwest Florida Regional Planning Council, the Florida Department of Community Affairs, and other appropriate agencies.

This amendment is rendered as of the date of transmittal, but will not be effective until the expiration of the statutory appeals period (45 days from rendition) or until completion of any appellate proceedings, whichever time is greater. Once effective, the Notice of Adoption of this Development Order Agreement must be recorded as provided in Chapter 380, Florida Statutes.

The foregoing resolution was adopted by the Board of County Commissioners by a motion by Commissioner _____, and seconded by Commissioner _____ and, when put to a vote, the result was as follows:

ROBERT P. JANES _____
DOUGLAS R. ST. CERNY _____
RAY JUDAH _____
TAMMY HALL _____
JOHN E. ALBION _____

DULY PASSED AND ADOPTED this ____ day of _____, 200_.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Dawn E. Perry-Lehnert
Office of the County Attorney

Exhibit A: Fifth Amendment of the Merchants Crossing DRI Development Order

**FIFTH DEVELOPMENT ORDER AMENDMENT¹
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #90-4-17-1 DRI**

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses, (2) amend the construction target plan, and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, the DRI Development Order was amended a third time on April 2, 1997 to extend the start date, build-out date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, on April 30, 2001 the DRI Development Order was amended a fourth time to extend the build-out, termination, and down zone protection dates of the project to October 28, 2007; and

WHEREAS, on January 15, 2004, Merchants Crossing of North Fort Myers, Inc.,

¹ This is a codification and restatement of all DRI development orders rendered with respect to the Merchants Crossing DRI, including actions taken on October 31, 1990, October 14, 1991, June 30, 1993, April 2, 1997, April 30, 2001 and _____, 2005.

filed an NOPC to amend Condition II.D.1.c to eliminate the requirement to provide certain fire fighting equipment; and

WHEREAS, the North Fort Myers Fire District is amendable to removal of the Developer's obligation to provide a ladder truck (i.e., 65-foot telesquirt fire truck) in order to construct a building in excess of two stories; and

WHEREAS, the Southwest Florida Regional Planning Council staff has opined that the amendment of the DRI Development Order approval to eliminate the obligation to provide fire fighting equipment, as required by DRI Condition II.D.1.c, constitutes a minor change as contemplated by Florida Statutes §380.06(19)(c)(2); and

WHEREAS, the proposed changes to the Merchants Crossing DRI Development Order do not constitute a substantial deviation and qualify for expedited processing pursuant to Florida Statutes §380.06(19)(e)(2) and Land Development Code §34-145(d)(1)(c).

I. FINDINGS OF FACT CONCLUSIONS OF LAW

A. Merchants Crossing DRI is a commercial development in northern Lee County which consists of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 555,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. A copy of Map H, depicting the development plan, is attached as Exhibit A. The construction target plan proposed by the developer is attached as Exhibit A-1a.

B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S

03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

C. The project's zoning is zoned Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended. The maximum building height is 50 feet in accordance with section II.D.1.

D. The Application for Development Approval filed on July 11, 1989 was found is consistent with the requirements of Chapter Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Chapter Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(11).

H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.

I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.

J. The proposed conditions below meet the criteria found in ~~Chapter~~ Section 380.06(15)(d), Florida Statutes.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, ~~in a public meeting~~ that the requested amendment to the Merchants Crossing Development of Regional Impact Application for Development Order Approval is hereby ~~ordered~~ Approved, subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer shall participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.
2. The developer and his successor(s) shall implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the stormwater drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer shall establish the legal entity which will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District prior to the implementation of the monitoring program. The program shall be designed in consultation with the

staffs of the Southwest Florida Regional Planning Council, the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the stormwater drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals shall not be granted until the developer has completed corrective measures as specified by Lee County. A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project shall have District permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.
4. The allowable discharge offsite for Merchants Crossing shall not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*
5. All water retention/detention areas shall meet District criteria. Any areas which do not meet this criteria may not be used in the calculation of water quality or quantity volumes.
6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, shall be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer shall provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information which verifies that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.
7. The developer shall confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the

benefit of on-site populations of these species.

8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course shall be designed to meet District criteria in effect at the time of permit application. *This requirement has been satisfied.*
9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site shall be provided at the time of permit application.
10. The developer shall undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice.
11. In areas adjacent to retail or office uses, the developer shall provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the stormwater management system.
12. The operation of the Merchants Crossing Stormwater Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Stormwater Management Plan shall demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI which eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.
13. Best Management Practices (BMP's) and monitoring and maintenance of the stormwater management system shall be implemented by the developer in accordance with District guidelines.
14. Any off-site road improvements constructed by the developer shall address water quality in accordance with the South Florida Water Management District criteria.
15. The use of septic tanks shall be limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use shall be eliminated when service is available on site from North Fort Myers Utilities.
16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency

round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs shall incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer shall ensure to the extent possible that following features are implemented through deed restrictions and/or covenants with successors in title. All applications for site plan approvals and building permits shall be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents shall be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative shall be utilized and the following features shall be included;

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.
10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.

11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.
13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.
14. Consideration by any project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer shall incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).
2. The developer shall show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer shall show that proposed mitigation measures address possible damage from watertable drawdown.
3. The project shall require a water use permit for any withdrawals from groundwater, project lakes and/or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, and/or road, or building foundations.
4. At the time of permit application, the developer shall provide verification that the proposed system designs will meet District criteria.
5. For the purpose of potable water conservation, Merchants Crossing shall utilize low water use plumbing/fixtures, self-closing and/or metered water faucets, and other water conserving devices.
6. For the purpose of non-potable water conservation, Merchants Crossing shall utilize xeriscape principles in the design and maintenance of the project's landscaping.

7. The developer shall utilize Lee County Utilities for potable water.
8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/1. To utilize this as a recharge source for the project lake system, the permit developer shall show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/1.
9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer shall show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.
10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer shall ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.
11. Any spray irrigation using treated wastewater shall be accomplished in accordance with state and local regulations. The developer shall use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.
12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system shall be reviewed and approved by the Lee County Utilities prior to commencement of construction.
13. The lowest quality of water possible shall be utilized for all outdoor non-potable water use.
14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, shall be restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.
15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer ~~shall~~ must:

- a. Pay fire protection and emergency medical services impact fees; and,
- b. Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.)
- c. ~~Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.~~

Limit all structures to a maximum height of 35 feet to meet public safety needs until such time that the North Fort Myers Fire Protection District acquires a ladder truck .²

2. The Merchants Crossing DRI shall comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

² At the time the initial DRI Development Order was approved, Merchants Crossing of North Fort Myers, Inc was required to purchase a 65-foot telesquirt fire truck or comparable equipment in the event a building permit was obtained from Lee County for any building over two stories in height. To satisfy an agreement between Merchants Crossing of North Fort Myers, Inc. and North Fort Myers Fire Protection District, Merchants crossing of North Fort Myers, Inc deposited \$36,000.00 in escrow with the North Fort Myers Fire Protection District at the time the original Development Order was issued. Merchants Crossing of North Fort Myers, Inc. and North Fort Myers Fire Protection District subsequently agreed that Merchants Crossing will not have to purchase a 65-foot telesquirt fire truck or comparable equipment for any building over two stories in height. Further, Merchants Crossing of North Fort Myers Fire protection District will return the \$36,000.00 escrow amount to Merchants Crossing of North Fort Myers, Inc. and that the North Fort Myers Fire Protection District would use the interest earned on the escrow account to pay the cost associated with obtaining an amendment to the DRI Development Order to remove the requirement to provide the 65-foot telesquirt or other equipment and to pay any remaining balance to the Lee County Emergency Workers Charitable Fund.

E. REGIONAL SHOPPING CENTER

The total maximum square footages/limits of development in each tract shall be as follows:

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
Retail & Entertainment Center and Perimeter Parcel Uses*			
Restaurants	(perimeter & Tracts I and II)	10,000 sf	
Gas Station	(perimeter)	1,000 sf	
Theater (Sixteen Screen)	(entertainment area of Tract II)	60,000 sf	
Retail/Service	(retail/service/entertainment tract & perimeter)	484,000 sf	
			555,000**
<p>*The square footage subtotals for the different uses provided above are estimates and are subject to reallocation among the other uses. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is found in "Master Concept Plan," drawing number Map-M.1A, revised through August 31, 1993.</p> <p>** As limited by all other conditions of the Zoning Resolution and DRI Development Order</p>			

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchant's Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation which features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion shall not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of a local Final Development Order, the developer shall submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System

shall be in accordance with the Mitigation Plan (M-3A) which is attached as Exhibit C.

2. At the time of permit application to the SFWMD, the developer shall provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal which includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.
3. Prior to the approval of a local Final Development Order for any phase of the development, the developer shall submit and subsequently follow a Florida Game and Freshwater Fish Commission approved Gopher Tortoise Management Plan.
4. The developer shall provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of Florida Game and Fresh Water Fish Commission and Lee County Division of Environmental Sciences.
5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, shall be incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build-out by the year 2007.
2. Merchants Crossing shall submit an annual traffic monitoring report. The monitoring program shall be designed in cooperation with the Lee County Department of Transportation, the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report shall contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:

US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at :
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.

US 41 at:
Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations shall be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing shall submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report shall be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports shall be submitted annually until project build-out. Actual build-out will occur when the developer has completed the

Development Order. *This requirement has been satisfied.*

- c. Within 90 days of approval of the DRI Development Order, the developer shall donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and shall donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. The necessary right-of-way ~~which is intended to be sufficient to accommodate a four lane divided highway built to FDOT standard, is shown on Exhibit D.~~ No roads impact fee credits shall be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*
- d. The developer shall construct, at no cost to the County, the following improvements to SR 78:
 - (1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.
 - (2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.
 - (3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer shall not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer shall submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer shall commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements shall be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim

improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost shall include the total engineering costs for the intersection.

The developer's obligation shall include the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule shall be approved by the County Engineer. *This requirement has been satisfied.*

- e. The developer shall donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*
- f. The developer shall construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer shall be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*
- g. Once funds are placed in escrow, \$200,000 shall be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road, In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor shall be required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements shall be any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Ordinance and/or Development Standards Ordinance, as either may be amended. The developer's obligation shall include the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule shall be approved by the Lee County Engineer. The developer shall pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.
5. Nothing contained in the Development Order is to imply or supersede Florida DOT permitting requirements.
6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.
7. Nothing contained in this Development Order shall be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefitted.
8. Merchants Crossing's proportionate share responsibility for any improvements required in this Development Order is discharged in full upon payment of the entire proportionate share contribution due under the terms of Paragraph G.3., which contribution shall not be reduced or refunded; provided, however, that all other provisions of the Development Order also shall govern. All contributions due under the terms of Paragraph G.3 have been paid.
9. If the proportionate share contribution due under the terms of Paragraph G.3 is not paid in a timely manner, development activities within and issuance of development approvals and building permits for Merchant's Crossing shall immediately cease. All contributions due under the terms of Paragraph G.3

have been paid.

10. Compliance with all of the terms of the transportation related provisions of this development order shall satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project shall incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.
2. The developer and subsequent tenants of the project, shall identify the proper method(s) for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater shall be provided by North Fort Myers Utility, Inc.
2. Septic tanks shall be used only for the temporary construction trailer and temporary leasing office, but shall be removed as soon as service is available from North Fort Myers Utilities.
3. Any septic tanks used shall not be for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.
4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer shall ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.
5. The developer shall provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.
6. The developer shall obtain all necessary permits from South Florida Water Management District, and DER for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation which is addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.
2. Pursuant to ~~Chapter~~ Section 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.
3. The development construction target plan presented within the Application for Development Approval and as adjusted to date of Development Order approval shall be incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this shall be presumed to be a substantial deviation for the affected regional issue. The development construction target plan has been amended and the amendments contained in the current development construction target plan attached hereto as Exhibit A-1-a do not create a presumption of a substantial deviation for any affected regional issue.
4. As required by ~~Chapter~~ Section 380.06(18), Florida Statutes, the developer shall submit an annual monitoring report (see Exhibit B) to Lee County, the SWFRPC, and the Department of Community Affairs.

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

1. This Development Order ~~shall~~ constitutes a resolution of ~~Lee County, adopted by the Board of County Commissioners~~ issued in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI, and all amendments thereto, as well as information submitted, as

part of the Notifications of Proposed Change to the DRI Development Order.

2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:
 - a. Merchants Crossing Application for Development Approval, July 11, 1989;
 - b. Merchants Crossing DRI sufficiency response, September 27, 1989; and
 - c. Merchants Crossing DRI sufficiency response, November 22, 1989.
3. This Development Order shall be binding upon the developer(s) and its assignees or successors in interest. Those portions of this Development Order which clearly apply only to the project developer, shall be binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but shall not be construed to be binding upon future tenants.
4. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.
5. All conditions, restrictions, stipulations and safeguards contained in this Resolution and Development Order may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.
6. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.
7. In the event that any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portion or sections of the Development Order which shall remain in full force and effect.
8. The approval granted by this Development Order is limited. Such approval shall not be construed to obviate the duty of the developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. Such approval shall also not obviate the duty of the developer to comply

with any County Ordinance or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.

9. Subsequent requests for local development permits shall not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:
 - a. A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or
 - b. An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board shall order a termination of all development activity in such area of the development affected by such substantial deviation or such expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. The deadline for commencing physical development under this Development Order shall be three years from the date of its adoption; provided that all conditions are met in a timely manner and further provided that this effective period may be extended by this Board upon a finding of excusable delay in any proposed development activity and that conditions have not changed sufficiently to warrant further consideration of the development.
11. In the event the developer fails to commence significant physical development of that property identified in this Development Order within three (3) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion or Occupancy on some substantial portion of the project (e.g., water management system or major road system). This Development Order shall otherwise terminate on October 28, 2007 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

12. However, an extension of the date of build-out of a development by five (5) or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a build-out date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits.
13. The Administrative Director of the Lee County Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order.
14. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, 2007, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.
15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, shall submit a report annually to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report shall describe the state of development and compliance as of the date of submission, and shall further be consistent with the rules of the State land planning agency. The annual report shall include information contained in Exhibit B, as further modified or otherwise updated by the State land planning agency. The first monitoring report shall be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting shall be submitted not later than May 1st of subsequent calendar years thereafter, until build-out. Failure to comply with this reporting procedure is governed by Section 380.06(18), Florida Statutes, and the developer shall so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This shall not be construed to require reporting from tenants or owners of individual lots or units.
16. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but ~~shall~~ is not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater later. Upon this Development Order becoming effective, notice of its adoption ~~shall~~ must be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in ~~Chapter~~ Section 380.06(15), Florida Statutes.

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

- Commissioner Janes
- Commissioner St. Cerny
- Commissioner Judah
- Commissioner Hall
- Commissioner Albion

DULY PASSED AND ADOPTED this _____ day of _____, 2005.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM

Dawn E. Perry- Lehnert
County Attorney's Office

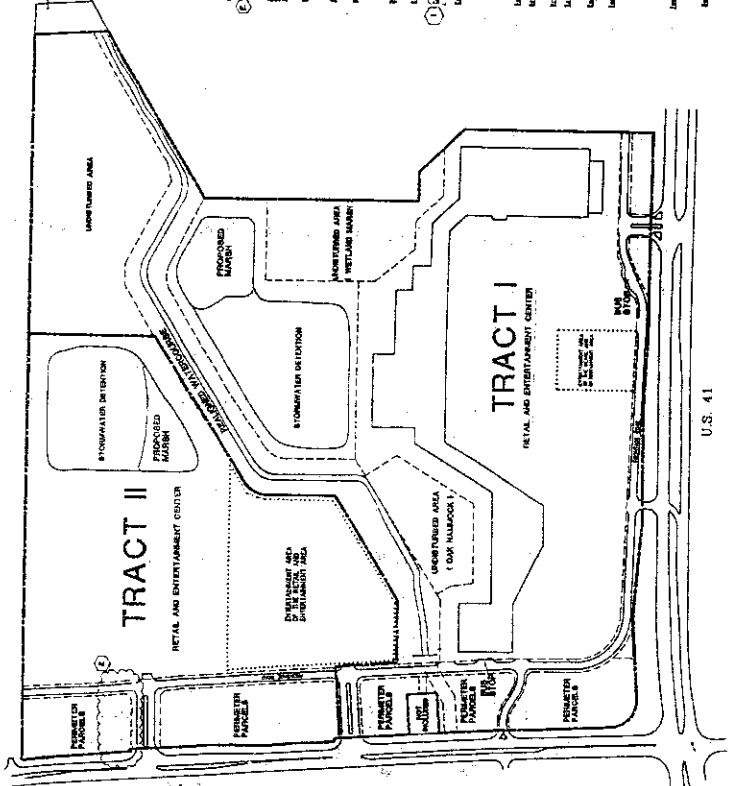
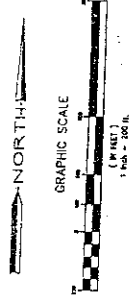
- Exhibits:
- A - Map H (Map M.1A)
 - A.1-Construction Target Plan
 - B - Monitoring Report Information
 - C - Mitigation Plan

SCHEDULE OF USES

Use	Code	Notes
RETAIL AND ENTERTAINMENT CENTER	RE-1	Includes retail stores, restaurants, and entertainment venues.
OFFICE	OF-1	Includes professional offices and administrative buildings.
RESIDENTIAL	RES-1	Includes single-family detached homes and townhomes.
COMMERCIAL	CO-1	Includes hotels, motels, and other commercial buildings.
INDUSTRIAL	IND-1	Includes manufacturing and industrial facilities.
UTILITY	UT-1	Includes power plants, substations, and other utility facilities.
RECREATION	RE-2	Includes parks, sports fields, and other recreational facilities.
TRANSPORTATION	TR-1	Includes roads, bridges, and other transportation infrastructure.
LANDSCAPE ARCHITECTURE	LA-1	Includes landscape design and site planning.
ENVIRONMENTAL	EN-1	Includes environmental impact studies and mitigation measures.
ARCHITECTURAL	AR-1	Includes architectural design and construction.
ENGINEERING	EN-2	Includes engineering design and construction.
PLANNING	PL-1	Includes urban planning and site analysis.
MARKETING	MA-1	Includes marketing and sales strategies.
LEGAL	LE-1	Includes legal counsel and contract review.
FINANCIAL	FI-1	Includes financial analysis and budgeting.
OPERATIONAL	OP-1	Includes operational planning and implementation.
MAINTENANCE	MA-2	Includes maintenance and repair services.
SECURITY	SE-1	Includes security measures and risk assessment.
COMPLIANCE	CO-2	Includes compliance with local, state, and federal regulations.
QUALITY CONTROL	QC-1	Includes quality control and assurance measures.
DOCUMENTATION	DO-1	Includes documentation of project progress and decisions.
COMMUNICATION	CO-3	Includes communication with stakeholders and the public.
CONSTRUCTION	CO-4	Includes construction management and oversight.
OPERATION	OP-2	Includes ongoing operation and management of the project.
DECOMMISSIONING	DE-1	Includes decommissioning and site restoration plans.

APPROVED

Amendment to
 Master Concept Plan
 Subject to Review in Amendment # 27-04
 Date: 07/27/04



PINE ISLAND ROAD (S.R. 78)

SITE DATA
SQUARE FOOTAGE DATA

Site Area	1,000,000 sq. ft.
Impervious Area	200,000 sq. ft.
Permeable Area	800,000 sq. ft.
Water Area	100,000 sq. ft.
Other Area	100,000 sq. ft.

LAND AREA DATA

Site Area	1,000,000 sq. ft.
Impervious Area	200,000 sq. ft.
Permeable Area	800,000 sq. ft.
Water Area	100,000 sq. ft.
Other Area	100,000 sq. ft.

Notes:
 1. All areas are based on the site plan.
 2. The site plan shows the proposed layout of the site.
 3. The site plan shows the proposed layout of the site.
 4. The site plan shows the proposed layout of the site.
 5. The site plan shows the proposed layout of the site.

EXHIBIT A-1:a
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

	Projected Start Date	Projected Opening Date
<u>ALL CONSTRUCTION STAGES:</u>	<u>10-07</u>	<u>10-07</u>
CONSTRUCTION STAGE I:		
RETAIL & ENTERTAINMENT CENTER:		
RETAIL	353,000 sf	
ENTERTAINMENT	6,000 sf	
		359,000 sf
PERIMETER PARCELS:		
BANKS (2)	8,000 sf	
GAS STA./CONV. (1)	1,000 sf	
GENERAL RETAIL (1)	3,000 sf	
		12,000 sf
TOTAL CONSTRUCTION STAGE I		371,000 sf
CONSTRUCTION STAGE II:		
RETAIL & ENTERTAINMENT CENTER:		
RETAIL	104,400 sf	
ENTERTAINMENT:		
CINEMA	60,000 sf	
RESTAURANT W/COP (3)	4,000 sf	
SHOPS	1,600 sf	
		170,000 sf
PERIMETER PARCELS:		
BANKS (1)	3,000 sf	
RESTAURANTS (2)	6,000 sf	
GENERAL RETAIL (2)	5,000 sf	
		14,000 sf
TOTAL, CONSTRUCTION STAGE II		184,000 sf
TOTAL, CONSTRUCTION STAGES I & II		555,000 sf

The parenthetical numbers shown above identify the number of actual uses.

Note 1. sf = Square Feet

Note 2. The square footage subtotals for the different uses provided above are estimates and are subject to being reallocated among the other uses. Any square footage not developed in construction stage I can be transferred to construction stage II and vice versa. The total square footage for both construction stages I and II shall not exceed 555,000 square feet. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is as stated in the schedule of uses found in the drawing entitled "Master Concept Plan," drawing number Map-M.1A, as revised through August 31, 1993.

Note 3. The dates shown are estimates and, therefore, are subject to change.

Note 4. The theater use located in the Entertainment Area of Tract II includes a sixteen screen movie theater estimated at 60,000 square feet. This represents an amendment from the previous approval of ten screens at 32,000 square feet. The amendment was authorized administratively by the county in 1994 pursuant to the developer's demonstration that the increase in traffic was not significant during peak hour and pursuant to the developer's consent to reduce the other retail square footage approved in Stage II by 28,000 square feet (the amount over the previously approved 32,000 square feet of theater use) .

EXHIBIT B

INFORMATION TO BE INCLUDED IN ANNUAL MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the construction target plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the year;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments which are contained in the Application for Development Approval and which have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the annual report in conformance with Subsection 380.06(14) and (16), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Subsection 380.06(14)(d), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality annual monitoring report (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation annual monitoring report (for review by Lee County, FDOT and SWFRPC).

STRAYHORN & STRAYHORN, P.L.
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2125 First Street, Suite 200 • Fort Myers, Florida 33901

Guy M. Strayhorn (1889-1981)
Norwood R. Strayhorn (1911-1982)
Guy R. Strayhorn
E. Bruce Strayhorn, P.L.
Richard W. Pringle, P.A.

Reply to:
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P. O. Box 1545
Fort Myers, FL 33902-1545

Telephone: 239/332-4717
Facsimile: 239/332-4718

E-Mail: Richard@strayhornlaw.com

June 28, 2005

[VIA EMAIL KELNERBJ@leegov.com](mailto:KELNERBJ@leegov.com)

Bryan Kelner
Lee County Community Development
P. O. Box 398
Fort Myers, FL 33902-0398

RE: MERCHANTS CROSSING 5TH DRI DO AMENDMENT-
FILE #2004-00002

Dear Bryan:

Pursuant to your request on Friday, June 24, 2005, please accept this correspondence as further clarification of the reasons for the request by the applicants to remove the provision of the DRI Development Order that requires the purchase of a Telesquirt Fire Truck in the event a building is built over two stories in height at Merchants Crossing.

The North Fort Myers Fire Control District and Merchants Crossing initially began discussions of the removal of the Telesquirt Fire Truck purchase requirement in the DRI-DO because both parties realized that a Telesquirt Fire Truck will probably not be needed in the future. There were several reasons the parties reached the conclusion that a Telesquirt Fire Truck will not be needed in the future. The first reason is that the North Fort Myers Fire Control District is now looking to acquire a ladder truck, possibly through a joint venture with the City of Fort Myers Fire Department, which will provide better fire protection services to a tall building in the District than the Telesquirt Fire Truck that was described in the DRI-DO for Merchants Crossing. The ladder truck is much more versatile as to the fire protection capabilities and rescue service capabilities in comparison to a Telesquirt Fire Truck, the sole use of which is to provide water suppression of a fire.

Bryan Kelner
June 28, 2005
Page 2

As the DRI Development Order is currently written, the deposit money and all interest earned thereon, will continue to sit in a bank account until such time as a building may be built at Merchants Crossing which exceeds two stories in height. So far, the deposit proceeds and interest earned on the deposit proceeds have remained in the bank account so that they are not usable by anyone. If the Telesquirt Fire Truck condition is removed from the DRI Development Order as requested by both the North Fort Myers Fire Control District and Merchants Crossing, the North Fort Myers Fire Control District can use the interest for part of the down payment for the purchase of a ladder truck. The North Fort Myers Fire Control District's ability to use the interest that has been earned on the initial deposit will only be available if the Telesquirt Fire Truck purchase condition is removed from the DRI Development Order as requested in the pending application. In addition, Merchants Crossing will receive a benefit from the removal of the Telesquirt Fire Truck purchase condition in the DRI Development Order as a result of the initial deposit money being returned to Merchants Crossing.

Both the North Fort Myers Fire Control District and Merchants Crossing view the deletion of the Telesquirt Fire Truck purchase condition from the DRI Development Order as a win-win situation for the reasons stated above. Again, the applicants respectfully request that the County favorably reviews the pending application so that the request by North Fort Myers Fire Control District and Merchants Crossing to remove the Telesquirt Fire Truck purchase condition is granted.

Please let me know the County Staff's response to our request in light of this additional information. Hopefully, this matter can be scheduled before the BOCC as a blue sheet item in the near future so that the deposit funds can be dispersed and used by the North Fort Myers Fire Control District.

Best Regards,

Richard W. Pringle


Richard W. Pringle
(Electronically signed to expedite.)

RWP/jlb
2004732

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: July 8, 2005

To: Kathy Geren
Public Resources

FROM: 
Dawn E. Perry-Lehnert
Assistant County Attorney

**RE: Merchants Crossing DRI Development Order Amendment
Bluesheet 20050189
LU-04-01-1031.K.**

On February 22, 2005, Bluesheet 20050189 related to Merchants Crossing DRI was deferred indefinitely. The issues leading to the deferral have been addressed. Therefore, we are requesting that the deferred item be placed on the Board Agenda for August 23, 2005. The original bluesheet and backup should be replaced with the attached documents.

Should you have any questions concerning the above, please do not hesitate to contact me.

DPL:tib

Attachments

cc: Mary Gibbs, Director, DCD
Pam Houck, Director, Zoning Division
Bryan Kelner, Principal Planner, DCD
Richard W. Pringle, P.A. Strayhorn & Strayhorn, P.L.