

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20051560

1. ACTION REQUESTED/PURPOSE: Conduct first public hearing to consider execution of a development agreement between Lee County and the owners and developers of the Alico Interchange Park DRI that will govern the mitigation of transportation impacts of the DRI.

2. WHAT ACTION ACCOMPLISHES: Finalizes the terms and conditions of the mitigation of transportation impacts for the Alico Interchange Park DRI.

3. MANAGEMENT RECOMMENDATION: Direct to second public hearing. Suggested date: November 15, 2005.

4. Departmental Category:

12 **9:30 PH2**

5. Meeting Date:

11-08-2005

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

Consent

X

Statute

163.3220

Administrative

Ordinance

Appeals

Admin. Code

X Public

Other

Walk-On

9:30 a.m. or as soon thereafter as may be heard.

Commissioner

Department

County Attorney

Division

Land Use

By:

Donna Marie Collins
Donna Marie Collins

9. Background: The Florida Legislature adopted the Florida Local Government Development Agreement Act to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic costs of development.

Lee County and the owners and developers of the Alico Interchange Park DRI propose to enter into the attached development agreement. The agreement outlines the mitigation protocol for the transportation impacts of the Alico Interchange Park DRI. The mitigation will consist of a lump sum cash payment that will be applied toward planned improvements to extend Three Oaks Parkway north of Alico Road

Staff recommends that the Board direct this matter to second public hearing on November 15, 2005, at 9:30 a.m. or as soon thereafter as may be heard.

Attachment: Draft Development Agreement for Alico Interchange Park DRI

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
	N/A	N/A	N/A	<i>[Signature]</i>	RK 10/26	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i> 10-28-05

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN: *[Signature]*
10-26-05
1200
COUNTY ADMIN
FORWARDED TO: *[Signature]*
10/28/05
8 AM

CO. ATTY.
FORWARDED
TO CO. ADMIN.
10/26/05 12:00

SECOND THIRD AMENDED DEVELOPMENT ORDER¹

FOR

ALICO INTERCHANGE PARK

A DEVELOPMENT OF REGIONAL IMPACT

#4-8485-54

Let it be known, that pursuant to Florida Statutes §380.06, the Board of County Commissioners of Lee County, Florida, has heard at a public hearing first convened on March 17, 1986, the application for development approval for Alico Interchange Park, a residential/commercial development on approximately 345 acres to be developed in accordance with the application filed for development on April 11, 1985 by Paul H. Freeman, authorized representative for Alico Interchange Park.

WHEREAS, the original Alico Interchange Park DRI Development Order was approved on November 10, 1986; and

WHEREAS, the Alico Interchange Park DRI Development Order was subsequently amended on February 17, 1992 to reduce the total number of dwelling units from 1,124 to 992; reduce motel acreage from 19 to 11 acres; increase mixed commercial square footage from 720,000 to 965,000 for the regional mall, but decrease other retail area so as to maintain overall commercial retail at 1,155,000 square feet; transfer a 15 acre park site and 10 acre school site to Villages of San Carlos DRI; realign Winged Foot Drive extension; establish procedures for impact fee credits; and extend buildout of all phases and final completion by three years less one day starting May 6, 1987 (the effective date of the original DRI DO); and

WHEREAS, on July 16, 1998 the developer submitted a Notice of Proposed Change to amend the Alico Interchange Park DRI Development Order a second time to comply with Conditions II.D and II.E.1 pertaining to traffic impacts attributable to development of the 990,000 square foot regional mall; and

WHEREAS, the Alico Interchange Park Development Order was subsequently amended on August 21, 2000 to amend the mix of uses to consist of the following: a total of 800 dwelling units; 400 hotel rooms; 326,000 square feet of office and

¹This document represents a compilation of the original DRI Development Order dated November 10, 1986, the First Development Order Amendment dated February 17, 1992, and The Second Development Order Amendment dated August 21, 2000, and shows the changes proposed by this Notice of Proposed Change, with additions underlined and deletions struck through.

professional non-retail commercial; and 1,120,000 square feet of retail commercial (139,000 square feet of retail and service and 990,000 square feet for a regional mall) for a total of 1,446,000 square feet of commercial development;

WHEREAS, on September 8, 2005 the Developer submitted a Notice of Proposed Change to amend the Alico Interchange Park DRI Development Order a third time to extend the build out date to November 10, 2007, eliminate reference to a regional mall land use, and amend the development order text and Map H to conform to administrative zoning changes approved by Lee County; and provide for a maximum of 1,446,000 square feet of combined total office/retail square footage (which includes up to 750,000 square feet planned for corporate headquarters/office use) provided the retail square footage does not exceed a maximum of 1,120,000 square feet; 400 hotel rooms; and 800 residential dwelling units (5.0 dwelling units per gross residential acre). Maximum building height is 95 feet; and

WHEREAS, in accordance with Florida Statutes 380.06(19)(3)2, the proposed changes to the Alico Interchange Park DRI Development Order do not constitute a substantial deviation and, therefore, are not subject to the requirements of §380.06(19)(f)(3) or (f)(5); and

WHEREAS, in accordance with F.S. §380.06(19)(e)4, the proposed changes to the DRI development order must be reviewed cumulatively with previously approved changes in order to determine whether the proposed changes will constitute a substantial deviation from the terms of the original DRI development order approvals; and

WHEREAS, the Board desires to adopt a codified Development Order to consolidate all of the past actions taken in regards to this approved development; and

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS of Lee County, Florida, that the development order for Alico Interchange Park DRI is further amended as set forth below:

NOTE: New language is underlined and deleted language is struck through.

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The applicant originally proposed to develop a mixed use project with 1,498 residential dwelling units (including 200 congregate living units), a 20-acre motel/tourist district, a 60-acre regional mall, 8 acres for general commercial purposes, 41 acres for office space, 30 acres for general retail and services, and 17 acres for public use, on approximately 345 acres.

The mixed use DRI project as originally approved in 1986 consisted of a total of 1,124 dwelling units (481 single-family, 643 multiple-family); 400 hotel units; 326,000 square feet of office and professional non-retail commercial; and a total of 1,155,000 square feet of retail commercial (250,000 square feet retail service; 720,000 square feet regional mall; 185,000 square feet miscellaneous retail associated with mall).

In 1992, the Alico Interchange Park DRI was amended to approve a mixed use project consisting of a total of 992 dwelling units (467 single family, 525 multiple-family); 400 hotel rooms; 326,000 square feet of office and professional non-retail commercial; and a total of 1,155,000 square feet of retail commercial (165,000 retail and service; 965,000 square feet regional mall and 25,000 square feet miscellaneous retail associated with mall).

~~In 2000, the Alico Interchange Park was amended to approve Adoption of this second DRI Development Order amendment serves to amend the mix of uses approved as part of the Alico Interchange DRI to consist of the following: a total of 800 dwelling units (467 single family, 333 multiple-family); 400 hotel rooms; 326,000 square feet of office and professional non-retail commercial; and a total of 1,120,000 square feet of retail commercial (130,000 square feet of retail and service; and 990,000 square feet regional mall). These development parameters are reflected on the phasing schedule attached as Exhibit A and Map H attached as Exhibit B.~~

Adoption of the third DRI Development Order amendment extends the build out date to November 10, 2007, eliminates reference to the regional mall land use, and amends Map H to conform to administrative zoning changes approved by Lee County in October 2005 that provide for a maximum of 1,446,000 square feet of combined total office/retail square footage (includes up to 750,000 square feet planned for corporate headquarters/office use) provided the retail square footage does not exceed a maximum of 1,120,000 square feet; 400 hotel rooms; and 800 residential dwelling units (5.0 dwelling units per gross residential acre). Maximum building height is 95 feet. (See ADD2005-00180). These development parameters are reflected on the phasing schedule and Map H, attached as Exhibits A and B.

B. The legal description of the entire Alico Interchange Park DRI property is as follows: attached as Exhibit C.

~~A legal description and sketch of the property identified as the regional mall is attached as Exhibit C.~~

C. ~~The subject property is currently zoned Residential Planned Development and Commercial Planned Development. Zoning resolution Z 91-082 and ADD2005-00180 contains additional details and restrictions on Alico Interchange Park, and also~~

provides for certain deviations from the Lee County property development regulations; and

D. The Application for Development Approval is consistent with the requirements of §380.06, Florida Statutes; and

E. The proposed development is not in an area designated as an Area of Critical State Concern pursuant to the provisions of §380.05, Florida Statutes; and

F. The development does not unreasonably interfere with the achievement of the objectives of the State Land Development Plan; and

G. The proposed development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body on November 21, 1985, and subsequently forwarded to Lee County pursuant to the provisions of §380.06, Florida Statutes, and the proposed development, as modified by this Development Order is consistent with the report and recommendations of the Southwest Florida Regional Planning Council; and

H. The proposed conditions below meet the criteria found in §380.06(15)(d), and (e), Florida Statutes; and

I. The proposed development, as modified by the conditions stated herein, is consistent with the Lee County Comprehensive Plan; and

J. ~~In accordance with the condition II.D, as imposed under the first amendment to the development order adopted in 1992, the traffic impacts applicable to the development of 990,000 square foot regional mall were reviewed under the criteria applicable to a substantial deviation. This second third amendment to the DRI Development Order includes conditions necessary to mitigate the traffic impacts associated with the entire DRI, including the regional mall, with a build out date of 20057. Any impacts associated with further extensions of a the buildout date beyond 2005 may require precipitate additional DRI review with respect to of traffic impacts, applicable to the entire DRI, as noted in Condition E-D.7, and subject to the Developer Agreement referred to therein.~~

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida, in a public meeting duly advertised, constituted and assembled on October 25, 2005, that the requested amendments to the Alico Interchange Park Development of Regional Impact are hereby APPROVED, subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The surface water management system for the Alico Interchange Park must implement the design standards and water quality "best management practices" outlined in the Application for Development Approval (A.D.A.) (in particular, the response to Question 22, Drainage), and all supplemental information presented in response to sufficiency questions. These design standards and practices include, but are not limited to, the following:

- (a) The existing borrow pit will be physically separated from the surface water management system, due to its proximity to the potable water wellfield;
- (b) One-half inch of dry retention pre-treatment will be required prior to sheet flow discharge into the lake system (10.5 ± acres of land were proposed for this purpose in the A.D.A.);
- (c) The use of gently-sloped grassed swales to channel run-off on long travel paths through the swale network to increase filtering/recharge, and to cause removal of turbidity, petroleum residue, and nutrients;
- (d) The use of berms along the lake banks to preclude the direct flow of polluted run-off directly into the lake; and
- (e) The use of a baffled outfall structure to limit the discharge rate and facilitate the entry of water from the central portion of the pond water column.

2. The developer and his successor(s) must 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 Alico Interchange Park. The developer will establish the legal entity that 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 must 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 not constructed in accordance with all approved plans, permits, and county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals will not be granted until the developer has completed corrective measures as specified by Lee County.

3. The developer must prepare a proposal to construct littoral shelves in the large lake system shown on the Master Concept Plan, in addition to the 6:1 side slopes, to offset the exceptionally large size of this lake. The Lee County Department of Community Development will review this proposal, and either accept or reject the plans, with the basis of any rejection clearly stated. The developer is responsible for the construction and planting of these shelves during the construction of the surface water management system.

4. The developer must implement a parking lot and street vacuum-sweeping program for all commercial areas of the project, on at least a twice-weekly basis.

5. Restrictive covenants must be prepared by the developer (subject to the approval of the Lee County Attorney's Office) that prohibit the use, generation, or storage of hazardous materials within the cone of influence for the Gulf Utility Company wellfield, as specified by the South Florida Water Management District at the time of permitting of the surface water management system, and require the use of appropriate containment features to ensure the separation of possible hazardous materials handling areas from the surface water management system as well as the development of an emergency response plan in the event a spill occurs. See also Conditions M.4 and M.5 below.

6. The developer must coordinate with Lee County and the Florida Department of Protection (DEP) for the provision of temporary transfer/storage facilities to accommodate all special and hazardous wastes, as classified by DEP, that are generated by the development. This facility should not be located on-site due to the potential risk of groundwater contamination to the Gulf Utility Company wellfield along the southeastern boundary of the Alico Interchange Park site.

2. ENERGY

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

These features are:

1. The provision of a bicycle/pedestrian system connecting all land uses, to be placed along arterial and collector roads within the project, and also along Alico Road west of Three Oaks Parkway (Corlco Parkway). This system is to be constructed in accordance with Lee County standards, and include walking/jogging paths and the extension of the bicycle/pedestrian system along all public streets within the development;
2. The provision of bicycle racks or storage facilities in recreational, commercial and multi-family residential areas;
3. The location of bus stops, shelters, and other passenger and system accommodations for a transit system to serve the project area, to specifications of the appropriate Lee County agencies;
4. The use of energy-efficient features in window design (e.g., tinting and exterior shading), and use of operable windows and ceiling fans in residential units;
5. The installation of energy-efficient appliances and equipment;
6. The prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g., building orientation, clotheslines, and solar water heating systems);
7. The minimum necessary 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, as determined by the Lee County Department of Community Development;
8. The installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas;
9. The installation 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) as specified in the Water Conservation Act, §553.14, Florida Statutes.
10. The selection, installation and maintenance of native plants, trees, and other vegetative and landscape design features that can be shown to reduce requirements for water, fertilizer, maintenance, and other needs, compared to non-native exotic plant species;
11. The planting of native shade trees for each residential unit, and to provide shade for all streets, parking areas, and recreation areas;

12. The placement of trees to provide shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months;

13. The orientation of structures, to reduce solar heat gain by walls and to utilize the natural cooling effects of the wind;

14. The provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical when natural shading cannot be used effectively;

15. The inclusion of porch/patio areas in residential units whenever possible; and

16. The establishment of an architectural review committee and consideration by the project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders and tenants in their efforts to achieve greater energy efficiency in the development and compliance with Conditions B.1 through B.15.

C. FLOOD PLAIN/HURRICANE EVACUATION

1. The developer must establish a homeowner's association to provide a program of education and information to the residents. This program will include the risks of environmental hazards, actions to be taken in the event of an evacuation, and actions necessary to mitigate the dangers posed by environmental hazards such as hurricanes.

2. The developer must establish a hotel/motel emergency management program to educate and inform the clientele. This program will include the subject matter described in Condition C.1 above.

3. The developer must contact the Lee County Disaster Preparedness Director to discuss the designation and use of certain non-residential areas as an alternative public emergency shelter.

4. All finished floor levels within the development must be at a minimum elevation of 17 feet NGVD.

~~D. REGIONAL SHOPPING MALL~~

~~The application for Development Approval identifies a regional shopping mall site within this development, just west of Three Oaks Parkway (Corrico Parkway) and north of the two elongated lakes shown on the Master Concept Plan (attached to Lee County Zoning Resolution Z-91-082) and legally described in attached Exhibit C. The regional mall site meets the locational criteria found in Lee Plan Policy 6.1.2 and is hereby~~

~~authorized for development subject to the requirements of this development order, including the conditions set forth in Section II.E.~~

~~If development of the regional mall extends beyond the established 2005 buildout date, then the owner/developer will be required to submit an NOPC application for buildout extension that includes a cumulative traffic impact reanalysis. This reanalysis must meet applicable Lee County and Southwest Florida Regional Planning Council standards and guidelines and specifically include all Alico Interchange Park DRI development as well as typical background traffic.~~

~~If the regional mall is not developed on the property identified in Exhibit C, then the developer/owner must submit an application identifying the alternative location for the regional mall within the DRI, if the mall is to be developed within the DRI, or the alternative uses that will be placed on the property identified in Exhibit C. Approval of this application will be required prior to commencement of the alternative development on the property identified in Exhibit C. However, this condition will not preclude development of other parcels within the DRI in accordance with Map II and the approvals granted under this DRI development order. The application must include a cumulative traffic reanalysis.~~

E.D. TRANSPORTATION

1. The traffic impact assessment upon which this Development Order for Alico Interchange Park is based, ~~assumes buildout in 2005 based upon the phasing schedule set forth in Exhibit A.~~ a maximum generation of 4,489 peak hour external trips at build out.

2. ~~An annual~~ A biennial monitoring program to be performed by traffic engineers engaged by the developer must be established to monitor the development's impact upon the area's roadways. The monitoring program must be designed in cooperation with the Lee County Department of Transportation and Engineering, which will determine specific information needed, frequency of information gathered, critical roadway points, and any other necessary information. ~~The Alico Interchange Park DRI mitigation was based on 4,489 total external trip ends. Of the total 4,489 external trip ends, 3,777 were considered to be net new external trip ends. An additional 712 retail trip ends were considered to be pass-by trips and will be included in the driveway volumes. At minimum, the Biennial Monitoring Report must contain:~~

- (a) average daily and PM peak-hour traffic counts with turning movements at the following intersections:
 - (1) All project access points onto Alico Road, Three Oaks Parkway (Corlico Parkway) and Winged Foot Drive (Ohio Boulevard);

- (2) Three Oaks Parkway (Corlco Parkway) at Alico Road and Winged Foot Drive (Ohio Boulevard);
 - (3) Oriole Road at Alico Road, Winged Foot Drive (Ohio Boulevard) and Pittsburgh Boulevard;
 - (4) U.S. 41 at Alico Road;
 - (5) U.S. 41 at Gladiolus Drive/Six Mile Parkway;
 - (6) U.S. 41 at Corkscrew Road;
 - (7) Alico Road at all I-75 ramps; and
 - (8) Daniels Parkway at all I-75 ramps.
 - (9) U.S. 41 and San Carlos Boulevard
- (b) a level of service analysis on the following significantly impacted road segments:
- (1) Alico Road - from US 41 to Ben Hill Griffin Parkway
 - (2) Ben Hill Griffin Parkway - from FGCU entrance to Alico Road
 - (3) Corkscrew Road - from U.S. 41 to Three Oaks Parkway
 - (4) Daniels Parkway - from Metro Parkway to Fiddlesticks Boulevard
 - (5) Daniels Parkway - from Chamberlin Parkway to Gateway Boulevard
 - (6) Daniels Parkway - from Chamberlin Parkway to SR 82
 - (7) Gunnery Road - from SR 82 to SW 23rd Avenue
 - (8) Lee Road - from San Carlos Boulevard to Pittsburgh Boulevard
 - (9) Lee Road - from San Carlos Boulevard to Alico Road
 - (10) Oriole Road - from North Cypress Drive to Alico Road

- (11) Oriole Road - from San Carlos Boulevard to Alico Road
- (12) Pittsburgh Boulevard - from Lee Road to Three Oaks Parkway
- (13) San Carlos Boulevard - from Corkscrew Road to Daniels Parkway
- (14) San Carlos Boulevard - from U.S. 41 to Lee Road
- (15) Three Oaks Parkway - from Corkscrew Road to Daniels Parkway
- (16) Treeline Avenue - from Alico Road to Daniels Parkway
- (17) Treeline Avenue - from Alico Road to SWFIA west entrance
- (18) U.S. 41 - from Alico Road to Ben C. Pratt/Six Mile Cypress Parkway
- (19) U.S. 41 - from Old 41 to Corkscrew Road
- (20) Winged Foot Drive - from Oriole Road to Three Oaks Parkway
- (21) I-75 from Alico to Daniels Parkway

The developer or his representative must submit the first monitoring report to the Lee County Engineer, the Southwest Florida Regional Planning Council and the Florida Department of Transportation one year after the issuance of the first certificate of occupancy for Alico Interchange Park DRI. Reports will then be submitted to the agencies listed above each year until buildout of Alico Interchange Park DRI. Actual buildout will occur when the developer has constructed the maximum number of dwelling units and commercial area permitted by the Development Order. Declared buildout would occur if the developer formally declared in writing to the County Administrator that no more units or commercial area will be constructed despite the fact that less than the permissible maximum had been built to date. The purpose of this program is to (a) determine whether or not the traffic levels projected in the Traffic Impact Statement for Alico Interchange Park are exceeded by actual traffic; and (b) assist Lee County in determining the proper timing of necessary roadway improvements.

3. During each phase of development, the developer must construct, at no cost to Lee County, all improvements deemed necessary by the Lee County Engineer at the project's access points onto Alico Road, Three Oaks Parkway (Corico Parkway), and Winged Foot Drive (Ohio Boulevard), including those necessary to accommodate the specific access configurations listed below.

The developer must also construct, at no cost to Lee County, all improvements deemed necessary by the Lee County Engineer to interconnect DRI internal roads with Oriole Road, Winged Foot Drive (Ohio Boulevard), and Pittsburgh Boulevard.

The developer's obligation for these improvements must include the full costs of design/engineering, utility relocation, right-of-way acquisition, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing, and signalization (as needed). If the developer is not able to acquire the necessary right-of-way, he may enter into an agreement with Lee County to reimburse all costs incurred by Lee County in a condemnation action necessary to acquire this land. The alignment, design, signalization and construction schedule for these improvements must be approved by the Lee County Engineer.

In order to maintain efficient traffic operation in the I-75/Alico Road interchange area, no direct access to Alico Road will be allowed between the I-75 interchange and Three Oaks Parkway (Corico Parkway).

Unless additional access is approved by the Director of Lee County Department of Transportation, access from the project shown on Map H to Alico Road and Three Oaks Parkway is approved and will be permitted as follows:

- (a) The access to the ~~regional mall~~ site to and from Alico Road will include a median opening that will accommodate all turning movements, and signalization if warranted. If the Traffic Impact Statement (TIS) submitted for the local development order demonstrates that a signal is warranted, then the signal will be built as part of the mall access construction.
- (b) The north and south accesses from Three Oaks Parkway to and from the ~~regional mall~~ commercial site west of Three Oaks Parkway and the commercial property east of Three Oaks Parkway (~~non-mall commercial~~) will be right-in/right-out accesses only.
- (c) The middle access from Three Oaks Parkway to and from the ~~regional mall~~ commercial site west of Three Oaks Parkway and the commercial property to the east of Three Oaks Parkway will be a ~~right-in/right-out access with a directional left turn for northbound~~

and southbound traffic on Three Oaks Parkway. full median opening that will accommodate all turning movements and signalization, if warranted.

- (d) The intersection of Winged Foot Drive and Three Oaks Parkway will include a median opening that will accommodate all turning movements.
- (e) All other accesses to the project will be as depicted on Map H.

The developer is not eligible for credits against roads impact fees for construction or dedication of right-of-way associated with the specific improvements listed in Condition ED.3 above because they are site-related as defined in the Lee County Roads Impact Fee regulations

4. The developer is responsible for:

- (a) Dedicating, at no cost to Lee County, sufficient right-of-way to provide a total of one hundred (100) feet of right-of-way for Three Oaks Parkway (Corlico Parkway) from Alico Road to the southern boundary of the DRI²; and
- (b) Constructing an additional two lanes to Three Oaks Parkway (Corlico Parkway) from Alico Road to the southern boundary of the DRI when deemed necessary by the Lee County Engineer to maintain the adopted level of service prior to buildout of Alico Interchange Park; and
- (c) Providing all intersection improvements deemed necessary by the Lee County Engineer as a result of the development of Alico Interchange Park at the intersection of Alico Road and Three Oaks Parkway (Corlico Parkway) during buildout of Alico Interchange Park.

At minimum, the developer must provide, at no cost to Lee County, the following improvements at the intersection of Three Oaks Parkway (Corlico Parkway) with Alico Road: on the Three Oaks Parkway (Corlico) approach to Alico Road, dual left-turn lanes, and a free flow right-turn lane with a full acceleration lane on Alico Road. These improvements are necessary due to the traffic generated by Alico Interchange Park DRI. The timing of these improvements will be established by the Lee County Engineer.

²This requirement has been satisfied.

The developer's obligation for these improvements includes the full costs of design/engineering, utility relocation, right-of-way acquisition, construction, construction inspection, contract administration, testing, and signalization (as needed). If the developer is not able to acquire the necessary right-of-way, he may enter into an agreement with Lee County to reimburse all costs incurred by Lee County in a condemnation action necessary to acquire this land. The alignment, design, signalization and construction schedule for these improvements must be approved by the Lee County Engineer.

Road impact fee credits will be issued for construction and any additional right-of way dedication associated with the widening of Three Oaks Parkway from 2 lanes to 4 lanes, including the intersection improvements required at Three Oaks Parkway and Alico Road in conjunction with this widening, in accordance with the Roads Impact Fee regulations in effect at the time the developer applies for the credits.[The issuance of road impact fee credits for this improvement is appropriate because it is in the 5 year CIP of 2000 and considered a class one road.] For dedication purposes, the value of the land will be established as of the date the Lee County Engineer determines the widening is necessary to maintain the adopted level of service. Improvements to Three Oaks Parkway have also been identified in the MPO 2020 Financially Feasible Plan as a means to relieve traffic volumes on I-75.

5. The developer must : (a) dedicate a total of eighty (80) feet of right-of-way for the extension of Winged Foot Drive (Ohio Boulevard) from Oriole Road to Three Oaks Parkway (Corlico Parkway); and (b) construct the two-lane extension of Winged Foot Drive (Ohio Boulevard) from Oriole Road to Three Oaks Parkway (Corlico Parkway).

The developer's obligation for these improvements includes the full costs of design/engineering, utility relocation, right-of-way acquisition, construction, construction inspection, contract administration, testing, and signalization (as needed). If the developer is not able to acquire the necessary right-of-way, he may enter into an agreement with Lee County to reimburse all costs incurred by Lee County in a condemnation action necessary to acquire this land. The alignment, design, signalization and construction schedule for these improvements must be approved by the Lee County Engineer.

Credits against roads impact fees for construction and right-of-way dedication associated with this extension of Winged Foot Drive (Ohio Boulevard) will be granted in accordance with the Roads Impact Fee regulations in effect at the time

credits are claimed. No credit against roads impact fees may be granted for right-of-way dedication in excess of the eighty (80) feet required in Condition ED.5.³

~~6. The developer must pay to Lee County the roads impact fees in effect at the time building permits are issued for all applicable residential and nonresidential development in Alico Interchange Park DRI. These impact fee payments plus the lumpsum payments specified in Conditions E.D7, represent proportionate share payments for the following improvements*:~~

- ~~(a) The addition of two lanes to Alico Road between U.S. 41 and the Seminole Gulf Railway;~~
- ~~(b) The addition of two lanes to Daniels Parkway between Ben G. Pratt/Six Mile Cypress Parkway and Fiddlesticks Boulevard or a parallel improvement;~~
- ~~(c) The addition of two lanes to Gunnery Road between S.R. 82 and SW 23rd Street;~~
- ~~(d) The addition of two lanes to I-75 between Bonita Beach Road and Corkscrew Road or a parallel improvement;~~
- ~~(e) The addition of two lanes to Three Oaks Parkway between Pittsburgh Boulevard and Alico Road;~~
- ~~(f) The addition of two lanes to U.S. 41 between Old 41/Pelican Landing Boulevard and Corkscrew Road;~~
- ~~(g) The addition of two lanes to U.S. 41 between Alico Road and Ben G. Pratt/Six Mile Cypress Parkway or a parallel improvement; and~~

³Based upon the traffic impact analysis provided in conjunction with approval of the second amendment to the DRI development order, the County believes that all improvements to Winged Foot Drive may be deemed site related improvements. Therefore, the issuance of impact fee credits for these improvements may be minimal.

*As a result of the Second Amended DRI development order, the needed list of improvements has been updated based on a transportation analysis including the existing roadway improvements in the year 2000 and those funded for construction within three years. Many of the needed improvements determined by the 1985 transportation analysis reflected in the original condition E.6. have been constructed and were included in the 2000 analysis as existing roadway improvements.

~~(h) — improvements at the following intersections:~~

- ~~(1) — Lee Road at Pittsburgh Boulevard — add westbound left, signalize when warranted;~~
- ~~(2) — U.S. 41 at d San Carlos Boulevard — add westbound left;~~
- ~~(3) — U.S. 41 at Alico Road — signalize retiming;~~
- ~~(4) — Oriole Road at Pittsburgh Boulevard — add westbound left, signalize when warranted;~~
- ~~(5) — Oriole Road at Winged Foot Drive — add westbound left, signalize when warranted;~~
- ~~(6) — Alico Road at the I-75 west ramps — add second westbound left, add second northbound left;~~
- ~~(7) — Alico Road at I-75 east ramps — add second westbound left, add second northbound left;~~
- ~~(8) — Alico Road at Three Oaks Parkway — add second northbound right, add second westbound right;~~
- ~~(9) — Alico Road at Oriole — signalize when warranted;~~
- ~~(10) — Alico Road at Ben Hill Griffin Parkway — add southbound left;~~
- ~~(11) — Alico Road at Mall entrance — add westbound left, northbound double left, add northbound right, signalize when warranted;~~
- ~~(12) — Three Oaks Parkway at North Mall Entrance — add eastbound left, add eastbound right; and~~
- ~~(13) — Three Oaks Parkway at Middle Mall Entrance — add northbound left, eastbound left, add eastbound right;~~
- ~~(14) — Three Oaks Parkway at South mall Entrance — eastbound left, add eastbound right;~~
- ~~(15) — Winged Foot Drive at Three Oaks Parkway — add double eastbound left, add westbound right, add double northbound left, signalize when warranted;~~
- ~~(16) — Winged Foot Drive at Mall entrance — add southbound left, add southbound right, signalize when warranted; and~~
- ~~(17) — Gorkscrew Road at I-75 ramps — signalize when warranted.~~

~~Should the roads impact fees be repealed, reduced, or made unenforceable by court action, a substantial deviation will be deemed to have occurred and project impacts must be re-analyzed to determine appropriate alternative mitigation.~~

76. In accordance with the traffic impact analysis prepared for the second development order amendments the total proportionate share obligation for the development of the Alico Interchange Park DRI through 2005 is \$10,484,427.

87. The Developer and Lee County entered into a Developer Agreement on October 25, 2005, that provides for a lump sum payment of the development's proportionate share obligation (as adjusted), in exchange for concurrency vesting until 2013 for the build out level of development up to a maximum of 4489 peak hour external trips.

This obligation is broken down as follows (assuming buildout no later than 2005):

Roads impact fee obligation:

Regional Mall alone	\$3,531,510
Balance of DRI	3,527,874

Proportionate Share obligation (amount over impact fee obligation) as a result of the second amendment to the DRI development order is \$3,425,046.

- ~~(a) *Mall Obligation.* In order to discharge the traffic impact obligation applicable to the development of the regional mall, the developer must pay the road impact fee obligation (\$3,531,510) applicable to the issuance of building permits for the mall at the time the building permits are issued.⁹ The proportionate share payment above the impact fee obligation (\$3,425,046) must be paid in full prior to the issuance of a certificate of occupancy for any portion of the regional mall site. Under the terms of this development order, a provision or agreement allowing the developer to defer payment of the proportionate share (\$3,425,046) beyond the issuance date of the first certificate of occupancy for any portion of the regional mall site is prohibited.~~
- ~~(b) *Non-mall obligation.* In order to discharge the traffic impact obligation applicable to the non-mall development, the developer must pay the road impact fee obligation applicable to the issuance of a building permit for the applicable use at the time of building permit issuance.~~
- ~~(c) *Buildout extension.* If either the regional mall or non-mall the development is not built out prior to November 10, 2005~~7~~, a Notice of Proposed Change application requesting an extension of the build out date must be submitted for approval. If less than 90% of the DRI development has occurred (measured as a percentage of the overall mitigation amount of \$10,484,427 paid to date), this~~

⁹With respect to nonresidential development on the regional mall site as identified in Exhibit C, the developer is prohibited from exercising the deferral rights set forth in LDC §2-273.

~~application must include a cumulative traffic reanalysis meeting the substantial deviation criteria and be pursued diligently to approval. Failure to submit the application prior to expiration of the 2005 buildout date and actively pursue the application thereafter may result in a denial of local building permit approvals.~~

~~The traffic reanalysis must be completed in accordance with applicable Lee County and Southwest Florida Regional Planning Council standards and guidelines, and will be an equivalent to an update of the developers A.D.A. assessment (Question 24), and will document:~~

- ~~(1) Updated commitments in approved planning programs to fund future roadway improvements;~~
- ~~(2) Impact fees, credits, construction dedications, lump sum payments and other funding provided by Alico Interchange Park DRI for roadway improvements approved by Lee County as eligible for credit against the proportionate share obligation; and~~
- ~~(3) Anticipated proportionate share payments necessary to offset the project's impact in order to complete buildout of the project, based upon the then-current land use parameters and phasing for the project, road improvements committed to be completed by other developers or governmental agencies, current estimates of background traffic and other relevant information that may affect the project's proportionate share payments to the established buildout date.~~

~~As an option, the developer may choose to pay the impact fee obligation for the balance of the development through buildout in a lump sum at the time the extension application is submitted, in which case a cumulative traffic reanalysis is not required. This does not supercede the standard submittal requirements for a typical Notice of Proposed Change under state law.~~

~~8. The lump sum payments over the impact fee obligation set forth in Conditions E.7 may be adjusted quarterly using the most State Highway Price Index contained in the Engineer News Record (McGraw-Hill Publications). Adjustments will be made relative to the change in the Florida Index from the 4th quarter of 2000 until paid to Lee County. If road impact fees charged by Lee County pursuant to the roads impact fee schedule adopted in 2000 are increased at any time prior to the proposed~~

~~buildout of the Alico Interchange Park DRI in 2005, then the lump sum payments made in accordance with condition E.7 will be reduced proportionately. Conversely, if the impact fee schedule adopted in 2000 is decreased at any time prior to the proposed buildout in 2005, then the lump sum payments required in accordance with condition E.7 may be increased proportionately.~~

~~9. The developer's obligation to make the lump sum proportionate share payments specified in Condition E.D. 76, over and above the roads impact fee obligation, is intended to account for the difference between the developer's estimated proportionate share of the cost for off-site improvements listed below and the amount Lee County expects to collect from the developer's payment of roads impact fees for development in Alico Interchange Park DRI:~~

~~The following improvements are necessary to address the significant and adverse traffic impacts attributable to development of Alico Interchange Park DRI:~~

- ~~(a) The addition of two lanes to Alico Road between U.S. 41 and the Seminole Gulf Railway;~~
- ~~(b) Eight-laning of Daniels Parkway between Ben C. Pratt/Six Mile Cypress Parkway and Fiddlesticks Boulevard or an parallel improvement to be identified;~~
- ~~(c) Four-laning Gunnery Road between S.R. 82 and SW 23rd Street;~~
- ~~(d) Six-laning I-75 between Bonita Beach Road and Corkscrew Road or a parallel improvement such as extensions of Ben Hill Griffin Parkway or Three Oaks Parkway;~~
- ~~(e) Four-laning Three Oaks Parkway between the southern project entrance and Alico Road;~~
- ~~(f) Six-laning U.S. 41 between Old 41/Pelican Landing Boulevard and Corkscrew Road; and~~
- ~~(g) Metro Parkway extension from Alico Road to Ben C. Pratt/Six Mile Cypress Parkway as a parallel improvement to U.S. 41.~~

~~10. If, at any time during development of Alico Interchange Park the developer can document that the total of roads impact fees paid by the developer for Alico Interchange Park plus the lump sum payments specified in Conditions ED.7~~

~~exceeds \$10,484,427⁶ (adjusted for inflation as described in Condition E D.) the developer may claim credits against future roads impact fees, up to but not exceeding the total of the lump sum payments (adjusted for inflation) paid in accordance with Conditions E.7. No refunds may be granted for roads impact fees previously paid for Alico Interchange Park or impact fee credits granted for the dedication or construction of any traffic improvements identified above.~~

~~11. Should the adopted level of service be exceeded for any regional road segment and/or intersection identified above, and;~~

~~(a) the required road and/or intersection improvements necessary to bring the identified roadway back to the adopted level of service are not funded and programmed for construction during the next five years (or if such a roadway and/or intersection improvement funded and programmed for construction during that five-year period is deleted from the program, postponed beyond the five-year period or not constructed within the five-year period), and~~

~~(b) Alico Interchange Park traffic is utilizing 5% or more, but less than 10%, of the adopted level of service on the impacted regional road segment or intersection;~~

~~then the developer must, within ninety (90) days, file a petition in accordance with Florida Statute §380.06 for determination of whether a substantial deviation has occurred.~~

~~If Alico Interchange Park is utilizing 10% or more of the adopted level of service on the impacted regional road segment or intersection, and the actual level of service on the roadway is worse than the adopted level of service, then a substantial deviation will be deemed to have occurred.~~

~~Alico Interchange Park DRI may continue development during the substantial deviation DRI review required as a result of tripping the review threshold established by this condition (Condition 11 8) if the developer enters into an agreement with the Department of Community Affairs, the Southwest Florida Regional Planning Council, and Lee County specifying the scope of development allowed during the review period. However, this paragraph may not be construed to guarantee to Alico Interchange Park the right to continue development during substantial deviation DRI review.~~

⁶Estimated proportionate share total established under the NOPC submittals and the development approvals granted in conjunction with approval of the second DRI development order amendment.

842. Nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Taxing or Benefit Units or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree that this development generates demand or is benefited.

~~43. In lieu of making the lump sum payments as identified in Conditions E.6, and E.7, the developer may construct or participate in the construction of all or a portions of, one or more of the following roadway improvements, provided the improvements are completed and accepted by the County prior to the time the lump sum payment is required to be made in accordance with condition 7(a). To the extent that developer costs to construct all or a portion of the following improvements exceed the lump sum payment set forth in condition 7 (\$3,425,046), the developer will be entitled to receive road impact fee credits in accordance with the applicable regulations:~~

- ~~(a) Construction of Three Oaks Parkway four-laning south of Alico Road;~~
- ~~(b) Improvements to the interchange of Alico Road with I-75; and~~
- ~~(c) Participation in development of an east/west corridor between Gorkscrew Road and Alico Road.~~

~~The developer's desire and ability to construct or participate in the construction of portions of, or all of, one or more of the above improvements is intended to:~~

- ~~(a) account for the difference between estimated proportionate share costs for off-site improvements and the amount Lee County expects to collect from this development through payment of roads impact fees; and~~
- ~~(b) ensure that roadway construction occurs in a timely fashion to serve this development.~~

F. RESIDENTIAL DENSITY

1. Residential development is limited to a maximum total of 800 units in the mix identified in Exhibit A, except as provided in the following paragraph.

2. The Lee Plan does not allow residential density in the area of this development to exceed 6.0 units per acre without the use of "bonus" provisions for low and moderate income housing. The oval-shaped residential area shown on the Master

Concept Plan and bounded by Winged Foot Drive, Three Oaks Parkway (Corlico Parkway), Pittsburgh Boulevard, and the new road parallel to Three Oaks Parkway (Corlico Parkway), is an appropriate location for bonus density units in the event the developer applies and qualifies for such additional units in the future, as the potential density would be compatible with the intensity of the surrounding land uses. The developer may apply for bonus density units. In order to qualify for bonus density units in the future, the developer must amend his zoning approval and comply with all other Lee County requirements. Bonus density may only be granted to the extent permitted by the Lee Plan and Housing Bonus Density Ordinance in effect at the time of approval of bonus density units.

G. EDUCATION

1. The original DRI Development Order required the dedication of a 10 acre school site or fee-in-lieu for Alico Interchange Park.^{7 4} That dedication is revised so that:

- (a) Instead of 10 acres or fee-in-lieu for Alico Interchange Park, the dedication must consist of a 5 acre site adjacent to the middle school site in the Villages of San Carlos Development of Regional Impact and provision for road access improvements. The developer of Alico Interchange Park must construct an east bound left turn lane from Koreshan Boulevard onto Cypress View Drive, and Cypress View Drive shall must be extended to connect Koreshan Boulevard to Three Oaks Elementary School. The access improvements must be completed no later than 18 months after the effective date of the First Development Order Amendment.
- (b) Consistent with the requirements of §380.06(16)(b), Florida Statutes, the developer is entitled to impact fee credit for the school site dedication and road access improvements, if a school impact fee is enacted at a later date and such credit is provided for, or if required by law.

2. The developer must provide school bus stops within the project, in conjunction with the roadway phasing. Design features and specific locations are to be determined by the Lee County School Board and the developer as part of the local development order process for each appropriate phase.

H. FIRE PROTECTION

1. The original development order approval required the developer to donate to the Lee County Board of County Commissioners, for shared use by the Sheriff's

^{7 4}This condition has been satisfied.

Department, Emergency Medical Service and the San Carlos Fire District, a 2.7± acre Sheriff's Substation/EMS Substation/fire station site to be known as the emergency services site. It has been determined that this site is no longer necessary to meet the public safety needs generated by the project. Therefore, the donation is no longer required.

Also, a total of \$58,412 (or a contribution of equal or greater value, acceptable to the fire district) must be provided to the fire district. The size, location, and timing of any monetary contribution must be negotiated with and satisfactory to the San Carlos Fire District. For any payment that is deferred, the amount due upon eventual payment should be the original amount adjusted for changes in the Construction Price Index (C.P.I.) published by the Engineer News Record (McGraw-Hill Publications). Such donation and payment shall must be made no later than the developer's first biennial report, unless a binding contract between the developer and the District agreeing to a different schedule is executed. The developer must provide a copy of any such agreement to the Department of Community Development. If this payment has not been made in a timely manner, no further building permits will be issued until payment is made, including 10% interest per annum.

2. If the height of any buildings in the development exceeds three (3) habitable stories, or if other construction styles or occupancy types so warrant, the developer must purchase ladder trucks and other equipment deemed necessary for this specialized fire protection by the San Carlos Fire District, and donate said equipment to the District.

3. Consistent with the requirements of §380.06(16), Florida Statutes, and if allowed by and pursuant to the applicable ordinances, or if required by law, the developer is entitled to:

- (a) Fire impact fee credits equal to the amount of the contribution the developer makes to the San Carlos Fire District, pursuant to Condition H.1. and H.2.

4. The aforesaid impact fee credits will be established, in the case of fire and EMS, at the time the contribution is made.

I. HEALTH CARE

The developer must designate a site to be used by Lee County Emergency Medical Services as an emergency helicopter landing site. The site should have road frontage and be free of aerial obstacles, and is subject to the approval of Lee County Emergency Medical Services.

J. RECREATION AND OPEN SPACE

1. The original DRI Development Order required the dedication of a 15 acre park site to Lee County. That dedication is revised so that instead of 15 acres within Alico Interchange Park, the obligation consists of a 15 acre transfer to a park site in the Villages of San Carlos Development of Regional Impact so that the park will total 38.2 acres within that project.^{9 5}

2. There must be no reduction in open space relative to the original DRI Development Order as a result of this amendment. The development ~~shall~~ must consist of no less than 86.36 acres of open space excluding lakes.

K. VEGETATION AND WILDLIFE/WETLANDS

1. All lake bank slopes must be constructed with broad littoral zones not steeper than 6:1 to a depth of 4 feet below the dry season water table. These littoral areas must be planted with native vegetation (with a total cattail population of not more than 20 percent); if the survival rate of the native vegetation after one year is less than 80 percent, replanting will be required. These requirements apply also to the existing borrow pit just north of the wellfield.

2. The developer must prepare a proposal for a long-term exotic vegetation control program. The Lee County Department of Community Development ~~shall~~ must review this proposal, and either accept or reject the plan, with the basis of any rejection clearly stated. The developer or his successors are responsible for the implementation of this program for those portions of the subject property that have not been conveyed to their final users. This proposal ~~shall~~ must be submitted with the developer's first biennial report.

3. The developer must coordinate construction of bird roosting areas within the southern lake system with the Florida Wildlife Commission (FWC) in order to ensure improved wildlife habitats.

4. The developer or his successor(s) must utilize a strong native landscaping program throughout the project, with an effort to save and/or create native upland habitat. This program must be submitted to the Lee County Department of Community Development. The Department must review this proposal, and either accept or reject the plan, with the basis of any rejection clearly stated. This plan must be submitted as part of the local development order process for each phase.

L. WATER SUPPLY

^{9 5}This condition has been satisfied.

The Wellfield protection regulations set forth in Lee County Land Development Code Chapter 14 will be used to establish groundwater travel times applicable to providing protection to the potable water wellfields operated by Gulf Utility Company located in easements on this property. The following special conditions apply:

1. The developer must install and maintain a dual piping system for those parts of the project outside the 100-day travel time contour, in order to provide properly treated wastewater effluent to meet irrigation requirements. Any such system should meet all relevant requirements and standards of the South Florida Water Management District, the Florida Department of Environmental Regulation, Lee County, and other pertinent agencies.
2. Within the 100-day travel time contour of the potable water wellfield, the following additional regulations apply:
 - (a) No spray irrigation, or other disposal method for sewage effluent may be conducted;
 - (b) Lakes may not be excavated closer than four (4) feet to the limestone portion of the aquifer, as determined by test borings submitted to the Division of Environmental Services at the time of final plan approval;
 - (c) If the limestone is encountered during excavation, it shall must be covered with four (4) feet of clean sand; and
 - (d) Bulk storage of fuels or pesticides, gasoline stations, and sewage effluent disposal ponds are not permitted.
3. Irrigation withdrawals from surface or ground water resources are only permitted for those parts of the project inside the 100-day travel time contour.
4. The use, generation, or storage of hazardous materials within the 210-day travel time contour of the wellfield is hereby prohibited in order to protect the potable water wellfield.
5. For those areas within the proposed project that are outside the 210-day travel time contour, any use, generation, or storage of hazardous materials should be preceded by the development and approval (by appropriate agencies) of containment features, as well as an emergency response plan in the event a spill occurs.
6. Any gasoline station must be located the maximum distance from the wellfield, and ~~shall be~~ designed with an extra bentonite (or comparable) liner outside of the tank to prevent any potential contaminant from entering the aquifer. Monitoring wells

shall must be constructed around such facilities to check the quality of the groundwater on a regular basis.

M. PHASING

The development phasing schedule attached to this document as Exhibit A is hereby incorporated as a condition of approval of this Development Order. The Development Order conditions and applicant commitments based upon and incorporated the Application for Development Approval, sufficiency documents, NOPC applications and amended Development Order are intended to mitigate regional impacts. If these conditions and commitments are not generally carried out as indicated, to the extent or in accord with the timing schedules specified within this Development Order and phasing schedule, then a substantial deviation for the affected regional issues will be deemed to have occurred.

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

1. **Resolution.** This Development Order constitutes the response of the Board to the Development of Regional Impact Application for Development Approval and subsequent NOPC applications filed for Alico Interchange Park DRI by Paul H. Freeman.
2. **Additional Developer Commitments.** All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval, subsequent NOPC applications and supplementary documents and not in conflict with conditions or stipulations specifically enumerated, above are hereby incorporated into this Development Order by reference.
3. **Binding Effect.** This Development Order is binding upon the developer and their heirs, assignees or successors in interest. Those portions of this Development Order that clearly apply only to the project developer, including but not limited to the initial construction of capital facilities, may not be construed to be binding upon future residents of single dwelling units. It will be binding upon any builder/developer who acquires any tract of land within Alico Interchange Park that would allow the construction of commercial facilities or more than one residential unit on such tract.
4. **Reliance.** 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 Development Order.
5. **Enforcement.** All conditions, restrictions, stipulations and safeguards contained in this 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, will be paid by the defaulting party.

6. Successor Agencies. Any reference herein to any governmental agency will be construed to mean any future instrumentality that may be created and designated as successor 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. Severability. 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 will not affect the remaining portions or sections of the Development Order, which will remain in full force and effect.

8. Applicability of Regulations. The approval granted by this Development Order is limited. Such approval may not be construed to obviate the duty of the applicant to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. Such approval does not obviate the duty of the applicant to comply with any applicable ordinances or other regulations adopted after the effective date of this Development Order.

9. Further Review. Subsequent requests for local development permits will not require further review pursuant to §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 that create a reasonable likelihood of adverse regional impacts or other regional impacts 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; or
- (c) Any other requirements of Chapter 380, Florida Statutes, that would require additional review.

Upon a finding that any of the above are present, the Board will order a termination of all development activity until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with §380.06, Florida Statutes, and all local approvals have been obtained.

10. Buildout and Termination Dates. ~~The deadline for commencing physical development under this Development Order is five (5) years from the date of adoption of the Order, 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 considerations have not changed sufficiently to warrant further consideration of the development. In the event the developer fails to commence significant physical development of that property identified in this Development Order within five (5) years from the date of rendition of this Development Order, development approval terminates and the development will be subject to further consideration. Significant physical development includes a Certificate of Compliance on some substantial portion of the project (e.g., water management system or major road system).~~

This Development Order ~~otherwise terminates on November 10, 2014~~ 2013 ~~(twenty-five (25) years from its original approval date)~~, unless an extension is approved. 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.

The established buildout date is November 10, 2005~~7~~. Based upon the conditions applicable to approval of the second DRI development order amendment, ~~any extensions~~ of the buildout date beyond 2005~~7~~ may be subject to further development-of-regional-impact review pursuant to F.S. §380.06(19). Subject to the Developer Agreement referred to in Section II.D.7, ~~the developer may be required to submit a cumulative traffic reanalysis and address mitigation of additional traffic impacts identified by the reanalysis in accordance with Condition II.D.7. For the purpose of calculating when a buildout date has been exceeded, the time will be tolled during the pendency of administrative and judicial proceedings relating to development permits.~~

11. Assurance of Compliance. The Administrative Director of the Lee County Department of Community Development or his/her designee, is the local official responsible for assuring compliance with this Development Order.

12. Biennial Reports. The developer, or his successor(s) in title to the undeveloped portion of the subject property, must submit a report ~~annually~~ biennially to the Lee County Board of County Commissioners, the Southwest Florida Regional Planning Council, the State land planning agency, and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission, and be consistent with the rules of the State land planning agency. The ~~annual~~ biennial report must contain information as specified in Exhibit D. The first monitoring report must be submitted to the Administrative Director of the Department of Community Development not later than November 1, 1987. Subsequent reports must be

submitted no later than November 1st of each calendar year. Failure to comply with this reporting procedure is governed by §380.06(18) Florida Statutes, and the developer must so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This condition will not be construed to require reporting from residents or successors of individual home sites, or dwelling units.

13. Protection of Development Rights. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until November 10, 2014, 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.

14. Transmittal and Effective Dates. 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 will 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. Upon this Development Order becoming effective, notice of its adoption must be recorded in the Office of the Clerk of the Circuit Court by the developer, as provided in §380.06(15), Florida Statutes.

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

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

DULY PASSED AND ADOPTED this 25th day of October 2005.

LEE COUNTY BOARD OF COUNTY
COMMISSIONERS

By: _____
Chairman

ATTEST:
Charlie Green, Clerk
By: _____
Deputy Clerk

APPROVED AS TO FORM

By: _____
Donna Marie Collins
County Attorney's Office

Exhibits:

- A. Phasing Schedule
- B. Map H (reduced copy)
- C. Legal Description
- D. Biennial Monitoring Report Guidelines

EXHIBIT A

**Phasing Schedule
(To be supplied)**

Exhibit B

**Map H (reduced copy)
(To be supplied)**

EXHIBIT C

Legal Description

A parcel of land lying in part of Section 10, Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Northwest Corner of Section 10; thence run S.1° 15' 49" E. along the West line of the Northwest Quarter (N.W. ¼) of said Section 10 for 50.00 feet to the point of beginning; thence run N.89° 22' 49" E. along the southerly right of way of Alico Road for 244.41 feet; thence run S.74° 28' 23" E. for 141.38 feet; thence run S.85° 16' 39" E. for 201.00 feet; thence run S.87° 24' 43" E. for 400.78 feet; thence N.89° 00' 43" E. for 400.00 feet; thence run S.87° 25' 17" E. for 225.04 feet; thence run N.89° 00' 43" E. for 296.95 feet; thence run S.87° 10' 27" E. continuing along said southerly right of way of Alico Road for 493.03 feet; thence run S.58° 57' 34" E. along the westerly right of way line of the southbound I-75 entrance ramp for 204.08 feet; thence run S.30° 48' 27" E. for 1414.02 feet; thence run southeasterly for 737.74 feet on the arc of a curve concave westerly having a radius of 1543.02 feet (chord distance 730.72 feet; chord bearing S.17° 06' 38" E.); thence run S.3° 24' 50" E. for 225.00 feet; thence continuing along said right of way line of Highway I-75 run southeasterly for 260.98 feet on the arc of a curve concave easterly having a radius of 5823.58 feet to a point on the South line of the Northeast Quarter (N.E. ¼) of said Section 10 (chord distance 260.96 feet; chord bearing S. 4° 54' 53"); thence run S.89° 18' 02" W. along said South line for 835.53 feet to the Northeast corner of the Southwest Quarter (S.W. ¼) of said Section 10; thence run S.1° 23' 47" E. along the East line of said Southwest Quarter (S.W. ¼) for 2664.23 feet to the Southeast Corner of said Southwest Quarter (S.W. ¼); thence run S.89° 49' 38" W. along said South line for 2650.40 feet to the Southwest corner of said Section 10; thence run N. 1° 26' 04" W. along the West line of said Southwest Quarter (S.W. ¼) for 2641.04 feet to the Northwest Corner of said Southwest Quarter (S.W. ¼); thence run N. 1° 15' 49" W. along the West line of the Northwest Quarter (N.W. ¼) of said Section 10 for 2637.03 feet to the point of beginning.

Tract herein described contains 345.3 acres.

DRI
EXHIBIT D

Biennial MONITORING REPORT REQUIREMENTS

The Biennial Monitoring Report that must be submitted by the developer in accordance with Subsections 380.06(15) and 380.06(18), Florida Statutes, and 9J-2.025(7), Florida Administrative Code, must include the following:

- A. Any changes in the plan of development or in the representations contained in the application for development approval, or in the phasing for the reporting year and for the next year;
- B. A summary comparison of development activity proposed and actually conducted for the year;
- C. Identification of undeveloped tracts of land, other than individual single family lots, that have been sold to separate entities or developers.
- 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. A specific assessment of the developer's and the local government's compliance with each individual condition 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 RPC, or the DCA as being significant;
- F. Any requests for substantial deviation determination that were filed in the reporting year and to be filed during the following 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 biennial report in conformance with Subsections 380.06(15) and (18), 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 Paragraph 380.06(15)(f), Florida Statutes.

NOTE: The Florida Administrative Code specifically requires that the development order specify the requirements for the biennial report. The Administrative Code requires that the annual report will be submitted to DCA, the RPC, and the local government on Form RPM-BSP-Annual Report-1.