

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Greg Stuart and Tom Daugherty filed an application on behalf of Mike Shrigley, Applicant, and G & M Estates USA Inc., owner, to rezone a 11.3 acre parcel from Agricultural District (AG-2) to Commercial Planned Development (CPD) in reference to Estero Pointe CPD; and,

WHEREAS, a public hearing was advertised and held on March 5, 2003, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2002-00039; and

WHEREAS, a second public hearing was advertised and held on June 2, 2003, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to rezone a 11.3-acre parcel from AG-2 to CPD, to permit development of mixed use commercial project (including Consumption on Premises for Tract B, C, & D) consisting of 95,000 square feet of gross floor area. The property is located in the Suburban Land Use Category and is legally described in attached Exhibit A. The request is APPROVED SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

1. The development of this project must be consistent with the one-page Master Concept Plan entitled "Estero Pointe CPD," stamped "Received JUN 13 2003 COMMUNITY DEVELOPMENT" except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

The project is limited to a maximum permitted gross floor area of 95,000 square feet. Of this total no more than 60,000 square feet may be used for uses which have to meet the Commercial Site Locational Standards of Lee Plan Policy 6.1.2.1.

Development of this site must be consistent with the landscaping/buffering commitments on the aerial submitted on February 11, 2003 and with the design standards shown on the

document entitled "Estero Pointe CPD Design Standards," stamped received January 7, 2003 and attached as Exhibit D.

Tract sizes shown on the Master Concept Plan ("MCP") may vary in accordance with the table below so long as the maximum amount of square footage for each individual tract, and for the project as a whole is not exceeded:

TRACT	SIZE	MAXIMUM INTENSITY
A	2 to 3.5 acres	30,000 sf. (One principal use only)
B	1.5 to 2.5 acres	50,000 sf.
C	4 to 5.5 acres	25,000 sf.
D	1.5 to 3.5 acres	35,000 sf.

Final building placement and footprints will be determined at the Development Order phase.

The MCP depicts the project's general configuration. Final building placement and footprints will be determined at the Development Order phase. The final site area, internal row, parking and circulation areas, building footprints, surface water management system and other functional elements will be substantially consistent with the approved M.P.

2. The following limits apply to the project and uses (the following Schedule of Uses replaces that provided on the approved M.P.):

a. Schedule of Uses (uses preceded with * are only permitted on Tracts in compliance within the locational criteria of Lee Plan Policy 6.1.2.1 - minor commercial uses)

ACCESSORY USES AND STRUCTURES (LDC Sections 34-1171 *et seq.*, 34-2441 *et seq.*, 34-1863, 34-2141 *et seq.*, and 34-3106)

ADMINISTRATIVE OFFICES (SUBJECT TO Note (1) of LDC Section 34-934)

*AUTO PARTS STORE - without installation facilities

AUTOMOBILE SERVICE STATION (limited to Tract A only)

BANKS AND FINANCIAL ESTABLISHMENTS (LDC Section 34-622(c)(3)): Groups I and II (without Drive-thru facilities) (If Drive-Thru facilities are provided the use must be located per Policy 6.1.2.1.)

BROADCAST STUDIO, COMMERCIAL RADIO AND TELEVISION (LDC Section 34-1441 *et seq.*)

BUSINESS SERVICES (LDC Section 34-622(c)(5)): Groups I and II

CAR WASH (limited to an Accessory use to a CONVENIENCE FOOD AND BEVERAGE STORE)

CLEANING AND MAINTENANCE SERVICES (LDC Section 34-622(c)(7))

*CLOTHING STORES, general (LDC Section 34-622(c)(8))

*CONSUMPTION ON PREMISES (LDC Section 34-1261 *et seq.*)

CONTRACTORS AND BUILDERS (LDC Section 34-622(c)(9)),

Group I only

CONVENIENCE FOOD AND BEVERAGE STORE (limited to Tract "A")

DRUGSTORE, PHARMACY

DRIVE-THRU FACILITY FOR ANY PERMITTED USE (limited to Tracts A and D)

EMERGENCY MEDICAL SERVICE (ambulance station)

ESSENTIAL SERVICES (LDC Sections 34-1611 *et seq.*, and 34-1741 *et seq.*)
ESSENTIAL SERVICE FACILITIES (LDC Section 34-622(c)(13)):

Group I only
EXCAVATION: Water retention (LDC Section 34-1651)
FOOD AND BEVERAGE SERVICE, LIMITED
*FOOD STORES (LDC Section 34-622(c)(16)): Group I only (excluding supermarket)
*GIFT AND SOUVENIR SHOP
*HARDWARE STORE
HEALTH CARE FACILITIES (LDC Section 34-622(c)(20)): Group III (only)
*HOBBY, TOY AND GAME SHOPS (LDC Section 34-622(c)(21))
*HOUSEHOLD AND OFFICE FURNISHINGS (LDC Section 34-622(c)(22)), Groups I and II
*LAUNDRY OR DRY CLEANING (LDC Section 34-622(c)(24)): Group I only
MEDICAL OFFICE
PARKING LOT: Accessory
*PERSONAL SERVICES (LDC Section 34-622(c)(33)): Groups I, II, III, and IV (excluding steam or Turkish baths, escort services, and tattoo parlors)
*PET SERVICES
*PET SHOP
POLICE OR SHERIFF'S STATION
POST OFFICE
PRINTING AND PUBLISHING (LDC Section 34-622(c)(36))
REAL ESTATE SALES OFFICE, (LDC Sections 34-1951 *et seq.*, and 34-3021) (strictly limited to the sale of lots/parcels within this planned development only. The location of, and approval for, the real estate sales office will be valid for a period of time not exceeding five years from the date the certificate of occupancy for the sales office is issued).
RECREATION, COMMERCIAL (LDC Section 34-622(c)(38)): Group I only (limited to Tracts B and C only)
RENTAL OR LEASING ESTABLISHMENT (LDC Section 34-622(c)(39)): Groups I and II only
RESTAURANT, FAST FOOD (limited to Tract A only)
*RESTAURANTS (LDC Section 34-622(c)(43)): Groups I, II and III only
SCHOOLS: Commercial (LDC Section 34-622(c)(45)) (LDC Section 34-2381)
SIGNS in accordance with chapter 30
*SPECIALTY RETAIL SHOPS (LDC Section 34-622(c)(47)): Groups I, II, and III
STORAGE: Indoor only, (LDC Section 34-3001 *et seq.*)
TEMPORARY USES (limited to temporary contractors offices and sheds [incident to construction as per LDC Section 34-3044], seasonal promotions, and sidewalk or parking lot sales)
*VARIETY STORE

b. Site Development Regulations

Minimum Lot Area and Dimensions:

Area: 20,000 square feet

Width: 100 feet

Depth: 100 feet

Minimum Setbacks:

Street: variable according to the functional classification of the street or road
(Section 34-2191 *et seq.*)
Side: 10 feet
Rear: 20 feet
Water Body: 25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171 *et seq.*
and 34-2194.

Maximum Lot Coverage: 45 percent

Maximum Building Height: 35 feet

3. No excess excavated material may be removed from the site unless the developer can demonstrate to the Director of Community Development that the material to be removed: 1) is unsuitable material that cannot be used onsite and 2) the material must be excavated to meet the minimum requirements to provide a water management system on the site. The purpose of this condition is to prohibit the voluntary creation of excess fill material for use offsite.
4. No blasting activities are permitted as part of this planned development.
5. Uses which must comply with the commercial site location standards in Policy 6.1.2.1, may not be constructed within the northernmost and southernmost 330 feet of the project (respectively), until it is demonstrated that the corresponding intersection required by Policy 6.1.2.1, physically exists and is physically and legally accessible from the project.
6. Prior to local development order approval, a protected species survey must be conducted specifically for gopher tortoises and a gopher tortoise management plan submitted for the Division of Environmental Sciences staff review and approval.
7. Prior to local development order approval, the landscape plan must include a hedge on the residential side of the wall shown along the west property line on the MCP. The single row hedge must be 100 percent native species, planted at a minimum 48-inch height and maintained at a minimum 60-inch height. The landscape plan must also demonstrate that there are a minimum of five *Sabal* palms per 100 linear feet on the Marsh Landing side of the wall, and a minimum of five native canopy type trees (e.g., live oak; black olive) per 100 linear feet along the east side of the surface water retention areas abutting the project road to meet the 10 trees per 100 linear foot buffer requirement.

This buffer must be installed as part of the first local development order for this project.
8. No outdoor storage or display of commercial products may be permitted as part of this planned development.
9. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

10. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.
11. No agricultural uses are permitted on this site.
12. Tract A is limited to one principal use.

SECTION C. DEVIATIONS:

Deviation 1 seeks relief from LDC §10-418(d)(6) requirement to provide an 8-foot-high solid wall or wall and berm combination to be constructed not less than 25 feet from the abutting property when roads, drives, or parking areas are located within 125 feet from an existing residential subdivision; to allow an enhanced Type F buffer. The Hearing Examiner recommends this deviation be **APPROVED SUBJECT TO Condition 7.**

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: The legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan
- Exhibit D: Estero Point CPD Design Standards

The applicant has indicated that the STRAP number for the subject property is:

09-47-25-00-00001.005A

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
 - c. is compatible with existing or planned uses in the surrounding area; and,

- d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
- a. the proposed use or mix of uses is appropriate at the subject location; and
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

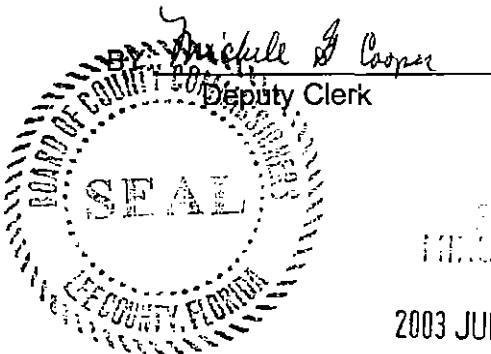
The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner St. Cerny, seconded by Commissioner Coy and, upon being put to a vote, the result was as follows:

Robert P. Janes	Nay
Douglas R. St. Cerny	Aye
Ray Judah	Absent
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 2nd day of June, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA



BY: Ray Judah
Chairman

Approved as to form by:

[Signature]
County Attorney's Office

2003 JUL 10 PM 12:49

EXHIBIT "A"
LEGAL DESCRIPTION
Property located in Lee County, Florida

Ink
Engineering

A Division of
LBFH, Inc.

CIVIL
AGRICULTURAL
WATER RESOURCES
WATER & WASTEWATER
TRANSPORTATION
SURVEYING & MAPPING
GIS

"Partners for Results
Value by Design"

1400 Colonial Blvd., Suite 31
Fort Myers, FL 33907
(941) 931-0455
Fax: (941) 931-0456
www.lbfh.com

OCTOBER 23, 2002
JOB NO. 8706-F
FILE: 8706-F-DESC.DWG

PARCEL F

LEGAL DESCRIPTION

A TRACT OR PARCEL OF LAND LYING IN SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 4, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE S.88°14'22"W. FOR 2266.44 FEET ALONG THE SOUTH LINE OF THE SOUTHEAST ONE QUARTER (SE 1/4) OF SAID SECTION 4 TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF U.S. 41 (S.R. 45, TAMiami TRAIL); THENCE S.06°41'21"E. ALONG SAID RIGHT OF WAY FOR 325.85 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE S.06°41'21"E. FOR 316.84 FEET ALONG SAID WESTERLY RIGHT OF WAY TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, RADIUS 11391.16 FEET, CENTRAL ANGLE 03°28'12"; THENCE SOUTHEASTERLY FOR 689.86 FEET ALONG THE ARC OF SAID CURVE; THENCE S.88°21'51"W. (NONRADIAL) FOR 500.20 FEET ALONG THE SOUTH LINE OF NORTH ONE HALF (N1/2) OF THE NORTHEAST ONE QUARTER (NE 1/4) SAID SECTION 9 TO A NONRADIAL INTERSECTION WITH A CURVE TO THE LEFT, CONCAVE TO THE WEST, CONCENTRIC TO AND LYING 500.00 FEET WESTERLY OF (AS MEASURED RADIAL) TO THE AFOREMENTIONED WESTERLY RIGHT OF WAY OF U.S. 41; THENCE NORTHWESTERLY FOR 645.76 FEET ALONG THE ARC OF SAID CURVE (RADIUS 10891.16 FEET, CENTRAL ANGLE 03°23'50", CHORD BEARING N.04°59'26"W., CHORD 645.66 FEET) AND A LINE COMMON TO A TRACT OR PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 1775 AT PAGE 2026 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA TO THE POINT OF TANGENCY; THENCE N.06°41'21"W. FOR 316.84 FEET ALONG SAID COMMON LINE; THENCE N.83°18'39"E. FOR 500.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 11.302 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS, AND RIGHTS OF WAY OF RECORD.

Applicant's Legal Checked
by *Glenn C. Adams*

INK ENGINEERING, A DIVISION OF LBFH, INC.
BPR LICENSE NO. 959
Glenn C. Adams
GLENN C. ADAMS
PROFESSIONAL LAND SURVEYOR
FL. CERT. NO. 6062

RECEIVED
OCT 31 2002

ZONING COUNTER

OCI 2002-00039

ZONING MAP

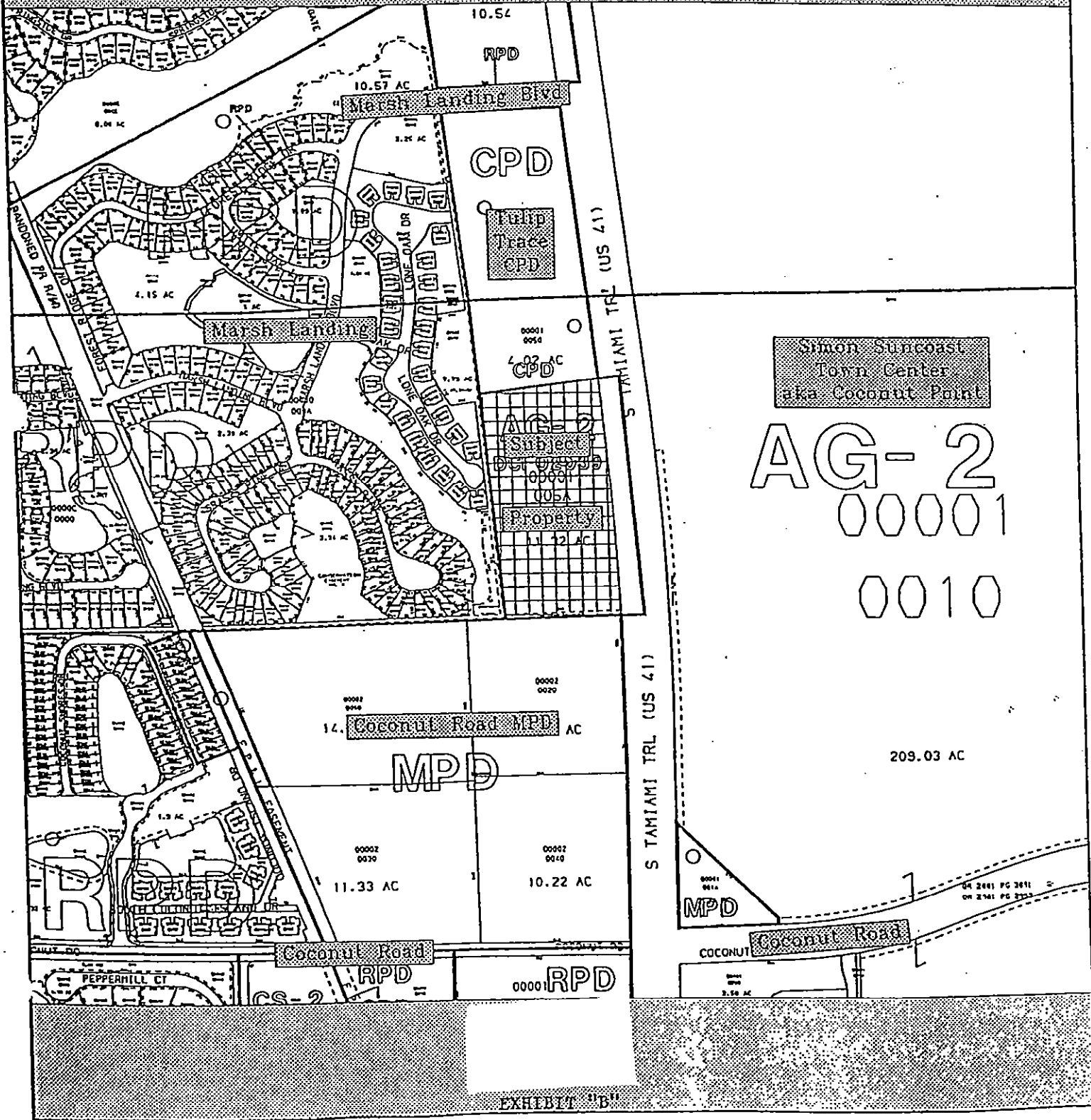
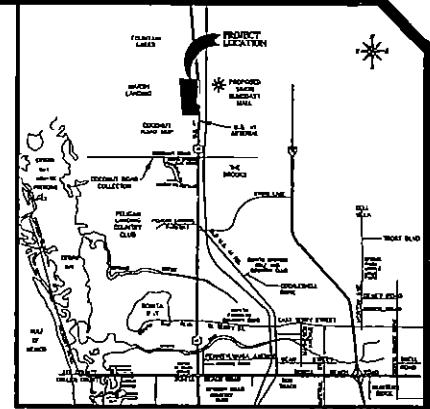
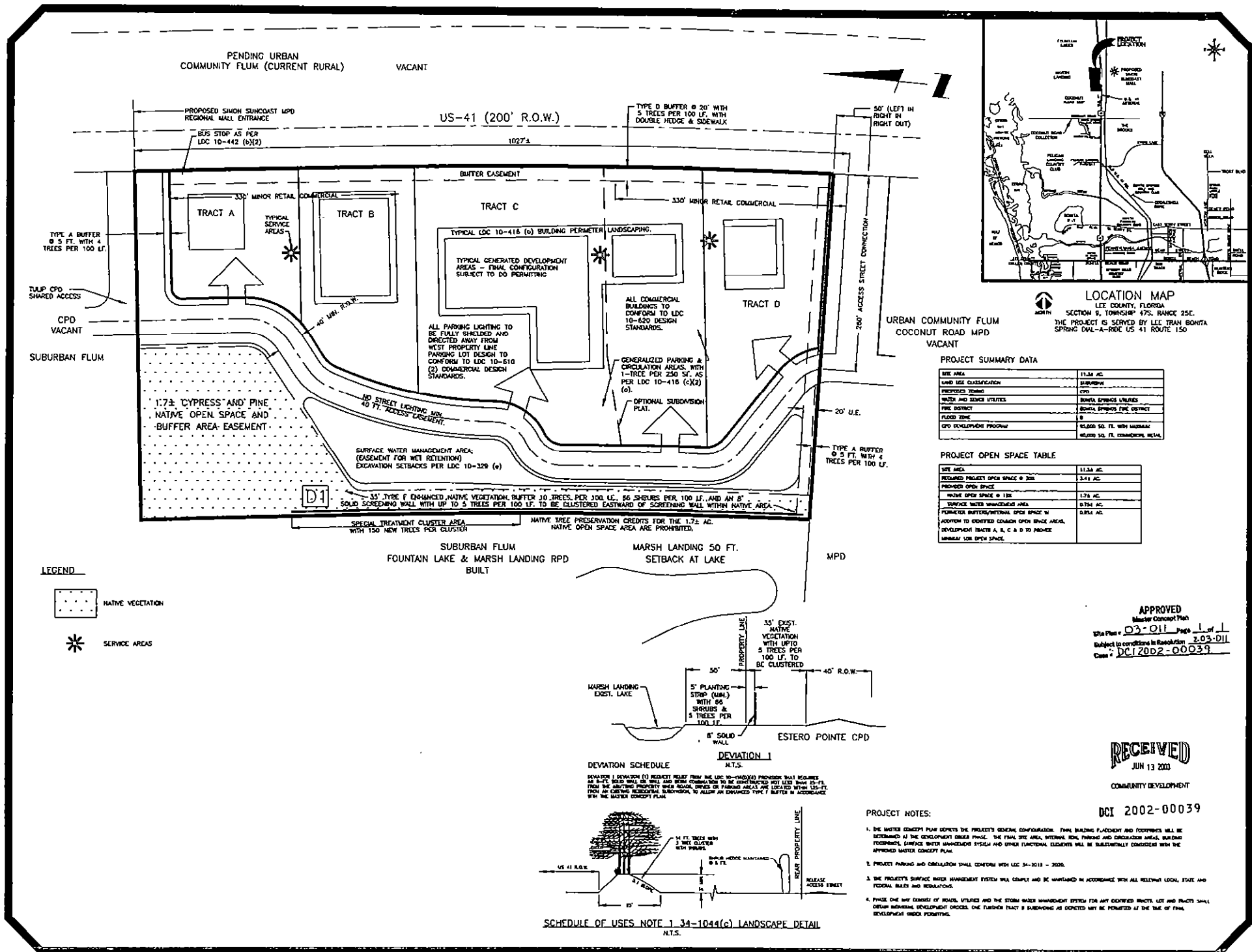


EXHIBIT "B"



PROJECT SUMMARY DATA

SITE AREA	11.34 AC.
LAND USE CLASSIFICATION	SUBURBAN
PROPOSED ZONING	CPD
WATER AND SEWER UTILITIES	SEWER SERVICES UTILITIES
FIRE DISTRICT	SEWER SERVICES FIRE DISTRICT
FLOODED ZONE	0
CPD DEVELOPMENT PROGRAM	45,000 SQ. FT. WITH MAXIMUM 60,000 SQ. FT. COMMERCIAL RETAIL

PROJECT OPEN SPACE TABLE

SITE AREA	11.34 AC.
REQUIRED PROJECT OPEN SPACE @ 20%	2.27 AC.
PROVIDED OPEN SPACE	2.27 AC.
NATIVE OPEN SPACE @ 10%	1.13 AC.
SURFACE WATER MANAGEMENT AREA	0.75 AC.
PERMETER BUFFERS/INTERNAL OPEN SPACE IN ADDITION TO REQUIRED OPEN SPACE AREA, DEVELOPMENT TRACTS A, B, C & D TO PROVIDE MINIMUM 10% OPEN SPACE	0.84 AC.

APPROVED
Master Concept Plan
Site Plan # 02-011 Page 1 of 1
Subject to conditions in Resolution 203-011
Case # DCI2002-00039

RECEIVED
JUN 13 2003

COMMUNITY DEVELOPMENT
DCI 2002-00039

Date: 5/6/03
Scale: 1" = 60'
Revisions: 02.004REVSP1
JOB NO: 02.004
Sheet 1 of 1



**MASTER CONCEPT PLAN
FOR THE ESTERO POINTE CPD**

EXHIBIT "C"

RECEIVED
JAN 07 2003

Estero Point CPD Design Standards

DCI 2002-00059

West Site Buffer:

- Proposed CPD – 35-ft. native open space area with 10 clustered trees and 66 shrubs per 100 LF with no native tree credits for commercial to residential tree planting buffering requirement;
- 8-ft. solid wall; and
- Up to 5 trees per 100 LF may be clustered behind the 8-ft. solid wall in a manner that provides in depth buffering within the Special Treatment Buffer Area.

Automobile Service Station and Gas Convenience Design Standards:

- Proposed CPD Landscaping – identical to the new Estero Code Landscaping but for all uses with drive-thru facilities along with other uses identified within the project Use Schedule.
 - 25-ft. landscape buffer berm @ 3-ft. height; 3 tree clusters @ 20-ft. on center with maximum 25-ft cluster to cluster distance; 14-ft. tall trees; rear and side yard buffer at 5 trees per 100 LF with 4-ft. tall shrub hedge.

Street Lighting Standards:

- Proposed CPD Lighting Standards -- identical to the new Estero Code Lighting standards but with a maximum 18-ft. height restriction; streetlights are prohibited along the projects reverse access street.
 - Directed away from adjoining properties, fully shielded and directed away to avoid intrusion from adjacent properties; low level indirect diffused onsite and underneath canopy lighting.

Service Area Design Standards:

- Proposed CPD Service Area Standards -- identical to the Estero Code Service Areas but for all CPD uses serve areas. All service function areas are to be located away from US 41 and from the west property line/March Landing RPD site area. All service function areas are to be fully screened on three sides by a 6-ft. wall, fence or similar structure with solid gate; all service function areas are to be landscaped by a continuous landscape hedge or similar screening device; all exterior mechanical equipment, including roof mounted HVAC equipment, must be screened from March Landing RPD.
 - 8-ft. enclosed trash area to be integrated with service station design.

Architectural & Signage Design Standards:

- Proposed CPD Architectural Standards – All permanent site identification signs, building identification signs and directory signs must be architecturally integrated and compatible with the project's building design theme. Prior to the first commercial development order approval, the Estero Pointe CPD Architecture and Signage Design Standards must be submitted for review and approval to the Director of Community Development. The Director shall review architecture and signage design standards Covenants, Rules, or other suitable mechanism(s) that will run with the land for approval. Out parcel facades must be treated as primary facades and employee a common color and material architectural theme shared with the main building(s) and other outparcels so as to create a unified development.

Operating Hours:

- Operating hours are limited to 7 a.m. to 11 p.m., Monday through Sunday.

EXHIBIT "D"



SCALE: 1" = 50'

SIMON MALL NORTH

PROJECT: [Illegible]
 DATE: [Illegible]
 DRAWN BY: [Illegible]

Tract A - sole development area for Fast Food or Gas Convenience along with other activities with the following (in zoning):
 20' x 21' landscaped 3-0' berm
 3 tree clusters @ 20-ft. OC with 14-11" installed trees
 rounded side yards @ 5 trees per 100 LF & 4-ft. hedge

100% CPD - approved for 130,000 SF
 @ 30,000 SF/acre

Covent Road MUD - approved for 250,000 SF retail office
 & 200,000 SF light industrial or MF



30' W.D.
 8' curb wall in-depth elevated tracks
 TYPE A BUFFER
 5' x 4' x 4' trees per 100 LF
 Typical preserved trees (no credits)

Legend:

- 1. Above code west site native buffering and setbacks.
- 2. Above code gas convenience uniform standards for all drive-thru uses.
- 3. Above code parking light and shielding standards.
- 4. Above code service function area buffering standards for all uses.
- 5. Uniform CPD design and architectural standards at DO.
- 6. Operating hour restrictions (no 24 hr uses).