



Osceola County Board of County Commissioners

August 18, 2008

ITEM NUMBER

DRI 06-0011

ECFRPC DRI #5389

Applicant

Newland Communities
and Regional
Development 192, LLC

Type of Application

Application for a
Development of Regional
Impact

Location

South of Neptune Road,
west of Ronald Reagan
Turnpike and the C-31
Canal, north of Goblet's
Cove (Lake
Tohopekaliga) and east
of Macy Island Road

Commission Districts

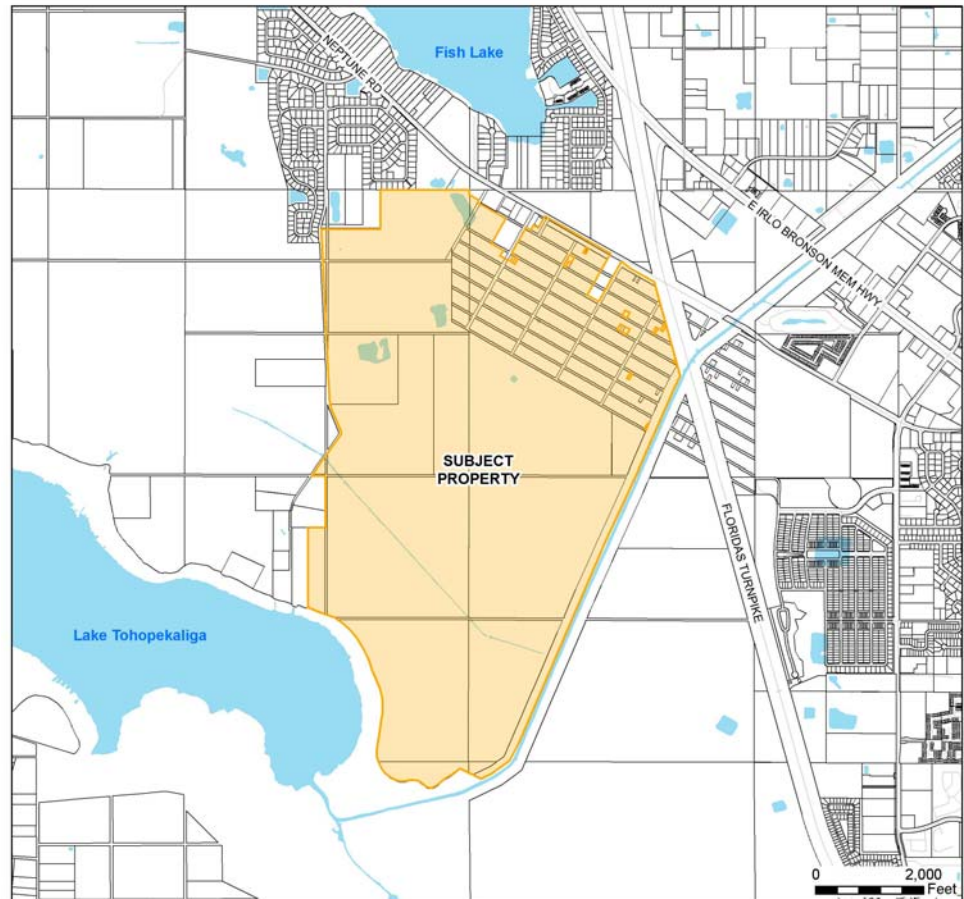
District 4, Ken Smith

Recommendation

Approval subject to
provisions of
Development Order.

Project Planners

R. Wayne Bennett, AICP
Michelle Beamon



Item Summary

Project Description

The applicant has proposed the Tohoqua (fka. Mariners Cove) Development of Regional Impact (DRI).

The proposed development includes: a maximum of 3,220 mixed residential units a maximum of 150,000 square feet of retail/services and office use, 30,000 square feet of institutional/civic uses, and up to 300 hospitality suites. The project also features park and recreation areas, pedestrian/bike trails, preserves and conservation areas, a regional drainage and flood control facility, a community center, public services, an elementary school, new road networking, a transit corridor, a boat ramp and an internal lake system with private docks.

A total project size of approximately 1,185 acres.

FINDINGS:

1. The proposed development of 3,220 dwelling units is consistent with the adopted Comprehensive Plan Future Land Use Policy.
2. The establishment of a Center is consistent with the locational and functional criteria contained in the adopted Comprehensive Plan.
3. Based on the analysis presented by the applicant and the proposed conditions of the Development Order, staff finds that requisite facilities and services will be available concurrent with the project's impacts.
4. Based on the conditions included in the proposed Development Order, staff finds that compatibility and transitional issues related to the project have been addressed.
5. Based on the data and analysis supplied by the applicant, and the conditions included in the proposed Development Order, the staff finds the proposal to be consistent with the intent of the adopted Comprehensive Plan Policy to identify, conserve and protect environmentally significant areas.

Planning Commission Recommendations

Approval, subject to the provisions of the Development Order; which includes the changes made to the Development Order by staff during the Planning Commission meeting.

Background

The ADA/DRI was submitted to the East Central Florida Regional Planning Council (ECFRPC) on November 17, 2006, under the project name of Mariner's Cove. The First Sufficiency Response was received April 5, 2007, Second Sufficiency Response was received on July 30, 2007, and the Third Sufficiency Response was received April 17, 2008. The ECFRPC reviewed the ADA and Sufficiency Responses and issued a report and recommendations on June 18, 2008. The Technical Review Committee met reviewed the development on January 10, 2007 and April 18, 2007. Staff submitted their final comments to the ECFRPC on May 15, 2008. This application was approved by the Osceola County Planning Commission on July 21, 2008.

Future Land Use Map Classification

The project is located in the Urban Expansion Area-Mixed Use. The parcels are currently zoned Agricultural and Residential (RS-1, RS-1A, and RS-2) zoning. The parcels are located in the future land use designation, according to the approved Comprehensive Plan (12/2007), of Mixed Use District.

Public Notice

Courtesy notices of public hearing were mailed to property owners within 300 feet of the subject property on July, 3, 2008. The application was advertised on July 20, 2008.

Consistency with Comprehensive Plan

This project was evaluated for consistency with applicable policies contained in the Future Land Use Element of the adopted Comprehensive Plan. The staff analysis and findings, the final letter and recommendations issued by the East Central Florida Regional Planning Council, and the proposed Development Order are attached to this document as exhibits.

Policy 1.3.11 (Establishes Mixed Use Future Land Use Category and minimum/maximum residential densities)

The 1,185 acre project site is located within the Urban Expansion Area-Mixed Use. These categories and the relevant number of acres within each are shown below.

The minimum density that may be permitted within Urban Expansion Area-Mixed Use Category is 5.0 dwelling units per net acre. Net density is defined as the total number of units divided by the net developable area for residential use. The net developable area consists of the residential land area less land for wetlands and regional, public recreation and open space areas in excess of the County's minimum requirements (see Policy 1.1.3). The net developable area for Tohoqua equals 554.3 acres. These "net" areas and minimum density standards yield the following estimate of total dwelling units that could be permitted in conformance with the Comprehensive Plan.

$$3,220 \text{ dwelling units} \div 554.3 \text{ net acres} = 5.81$$

Based on this analysis, staff finds that the proposed development of 3,220 dwelling units is consistent with the adopted Comprehensive Plan Future Land Use Policy based on the condition that the number of

dwelling units within the Urban Expansion Area will be a minimum of 5 dwelling units per net acre.

Policy 1.3.13 (Establishes location and functional standards for Centers within the Mixed Use Category)

The applicant has proposed retail use, office use and institutional use. Most of these uses will be accommodated in a Center. This Center will be located near Neptune Road and the proposed Toho Parkway. In addition, it is expected that the center would also include higher density residential to include apartments and townhomes.

The center will be classified (Neighborhood Center, Community Center, etc.) in order to properly serve the surrounding community. The proposed number of dwelling units (3,220) is significant and would be expected to result in a project population of more than 8,726.2 at buildout. For planning purposes, a guideline of 100 square feet of commercial building area is reasonable to use as an estimate of the amount of supportable convenience and food related retail area based on the number of dwelling units within the market area. The 3,220 dwelling units could reasonably be expected to support 322,000 square feet of commercial retail uses, which exceeds the number (150,000 sq ft) proposed for this project.

Based on this analysis, staff supports the establishment of a Center designation in the Mixed Use Area within the general location depicted on the proposed Map H.

Policy 1.6.1 – Development Orders and permits will be granted only if facilities and services are available or will be available concurrent with the project's impacts at/or above the County's adopted level of service standard.

The Application for Approval (ADA) provided information about the impact of the development on public schools, roads, potable water and wastewater facilities, stormwater systems, and other public facilities and services. Letters were included in the ADA regarding the availability of services. Available capacity was confirmed by the City of St. Cloud for water and sewer, the St. Cloud Regional Medical Center confirmed hospital capacity, Osceola County confirmed solid waste capacity, the Osceola County Sheriff's Office confirmed support in regards to law enforcement and public safety needs, as well as the School District of Osceola County confirmed the need and donation of suitable school sites.

Several provisions, or "conditions" contained in the proposed Development Order are intended to ensure that adequate levels of services for public facilities and services will be maintained during the course of development of Tohoqua. As an example, Conditions 22-40 address mitigation of vehicular transportation impacts, and Condition 41 addresses the methods to ensure the concurrent development of schools to serve the Tohoqua development.

Based on the analysis presented by the applicant and the proposed conditions of the Development Order, staff finds that requisite facilities and services will be available concurrent with the project's impacts.

Objective 1.7 – The assurance that an acceptable level of compatibility is achieved with adjacent land uses during the County's review of Development Orders.

Throughout the review of this proposal, the relationship of the proposed development to Lake Tohopekaliga has been a source of concern. This concern has been addressed in through the conditions of the proposed Development Order.

The potential impact to Lake Tohopekaliga has been addressed in several ways. The applicant proposes a passive linear, lakefront park that will parallel the Lake Tohopekaliga shoreline and provides uninterrupted access. It is intended to protect and showcase the shorefront while providing an important pedestrian/bike trail link between the neighboring developments of regional impact in the area. The applicant proposes limited enhancement of the lakefront park by planting supplemental native trees and vegetation to further define the shoreline environment. The Lake Toho Protection Area will be designated to include a 250 foot minimum, 500 foot average buffer along the Lake Toho shore, measured from the controlled high water line elevation of 55.0 feet. The proposed Development Order addresses these concerns through Condition 16.

Attention was given to the compatibility between the uses. The subject property is bordered by the Toho Preserve development to the North West, and the Edgewater development is to the South of this project, though not directly connected. These developments have been working together; along with Green Island, Bella Tara, and the Friars Cove Developments of Regional Impact, to address such topics as stormwater management, roadway connectivity, and wildlife management. This process was organized this was to ensure a holistic development of the Mixed Use Districts.

Based on the conditions included in the proposed Development Order, staff finds that compatibility and transitional issues related to the project have been addressed.

Policy 1.8.2– Identifying areas critical to protection and conservation.

Consistency with this Comprehensive Plan Policy is addressed through three proposed conditions of approval. First, the applicant has proposed to preserve and enhance 34.66 acres of wetlands, along with required wetland upland buffers that are a minimum of 50 feet for wetlands of regional significance. These resources are depicted on Map H.

The second set of conditions (10-13) requires the preparation of a Habitat Conservation and Management Plan (HCMP) to protect the habitat of endangered or threatened wildlife. These habitat areas will ultimately be identified and preserved through conservation easements and will, in some cases, represent lands that are outside of existing wetlands.

The third condition involves the establishment of a safe development line along the perimeter of Lake Toho that would prevent development lakeward of this line, and establish a minimum 250 foot wide buffer from the safe development line, preserving the lakeshore, existing vegetation and wildlife habitat. This topic is discussed in Condition 16 of the Development Order.

As proposed, the “master developer” will be responsible for preparation of the HCMP and County staff will review for sufficiency. However, when the HCMP has been completed, the County will assume the responsibility for ongoing monitoring and implementation of the plan with associated costs to be assumed by the development.

Based on the data and analysis supplied by the applicant, and the conditions included in the proposed Development Order, the staff finds

the proposal to be consistent with the intent of the policy to identify, conserve and protect environmentally significant areas.

Policy Directions

In addition to providing a staff analysis and findings that address compliance of the development proposal with the Comprehensive Plan, staff believes it is important to note “policy directions” that have been taken through the language of the proposed Development Order. In most cases, these “policy directions” represent new approaches to issues that staff would pursue with other development proposals. For the Tohoqua proposal, three “policy directions” are identified and discussed below.

1. Responsibility for monitoring and implementation of the Habitat Conservation and Management Plan.

The requirement to produce Habitat Management Plans (aka Habitat Conservation and Management Plans) has been a standard feature of most DRI Development Orders. The policy direction that staff has taken [via Conditions 10-13] is to provide that the County will be responsible for approval and monitoring of the HCMP, with the developer responsible for preparing the HCMP and funding the County's ongoing implementation efforts. Staff is taking this direction in order to accomplish the following:

- Ensure consistency in monitoring development activity within and around habitat conservation areas
- Ensure that HCMP's remain effective after the developer has completed the project and transferred remaining responsibilities to a homeowner's association or CDD board.
- Reduce the cost of HCMP monitoring and implementation that accrue to individual projects by consolidating efforts
- Create staff or third party professional capacity for County to accept and monitor Conservation Easements
- Take a more direct role in the implementation of Conservation policies associated with the adopted Comprehensive Plan

2. Requirement to construct and operate retail or other uses within the Center

The mixed use approach to development that the County has embraced places a greater emphasis on designing and building all the components (retail center, neighborhood, civic) in unison. Market support and timing of retail development are key issues involved in the development of the neighborhood or community center, but staff recognizes it is important to begin the development process of non-residential uses as early as practical. This has the practical benefit providing some support, service, retail and civic uses for residents to use as well as visualize what the center/community will look like and how it can function. Neighborhood and community centers are “image-makers” for mixed use developments and can have a significant positive effect on the success and attractiveness of these types of communities. The key element of the Development Order that carries out this policy direction is Condition 9(j)(iv). This condition has the following

attributes:

- The master developer is required to get a site within the community center ready for up to 60,000 square feet of non-residential use before the issuance of a certificate of occupancy for the 1,200th dwelling unit.
- The master developer must actually build and have operational 25,000 square feet of non-residential space before the County will issue a permit for any development within the second phase of the project.

3. Replacement of specific residential density categories on Map H with a single “neighborhood” designation.

Within the Urban Expansion Area (aka the Mixed Use District), the County’s planning focus is shifting to building mixed use and mixed housing type communities. Developers are being encouraged to build neighborhoods that contain multiple housing types such as single family detached, townhouse, two-family attached and multifamily. The decisions about how this mix can be accomplished within a single neighborhood should not be made at the DRI stage of development review. Such decisions are more appropriately reviewed at the time of a Planned Development or CDP (Comprehensive Development Plan) application. This is why staff has placed a greater emphasis in the proposed development order on creating compatibility standards to address how neighborhoods are designed to accommodate a mix of housing types and create more opportunities for a wider range of price points for purchase or rental of housing units.

Future Zoning Implications

Following approval of the Development of Regional Impact, a rezoning from the existing Agricultural and Residential (RS-1, RS-1A, and RS-2) zoning to a category of PD (Planned Development) will be required to implement the provisions of the DRI Development Order. PD zoning would accomplish the County’s recommended mixed use approach by providing flexible guidelines to achieve a design quality superior to that allowed by the County’s conventional zoning districts. PD zoning would also encourage the efficient and functional integration of land uses including single-family, multi-family, retail, office, institutional and public service facilities proposed by the DRI.

Summary & Staff Recommendation

Based on Osceola County Staff’s evaluation of the request and the stated findings, recommended approval of the Edgewater DRI, subject to the provisions of the associated DRI Development Order.

Exhibits

- A. DRI Map “H”
- B. Staff Comments from TRC
- C. Final ECFRPC Recommendations
- D. DRI Development Order

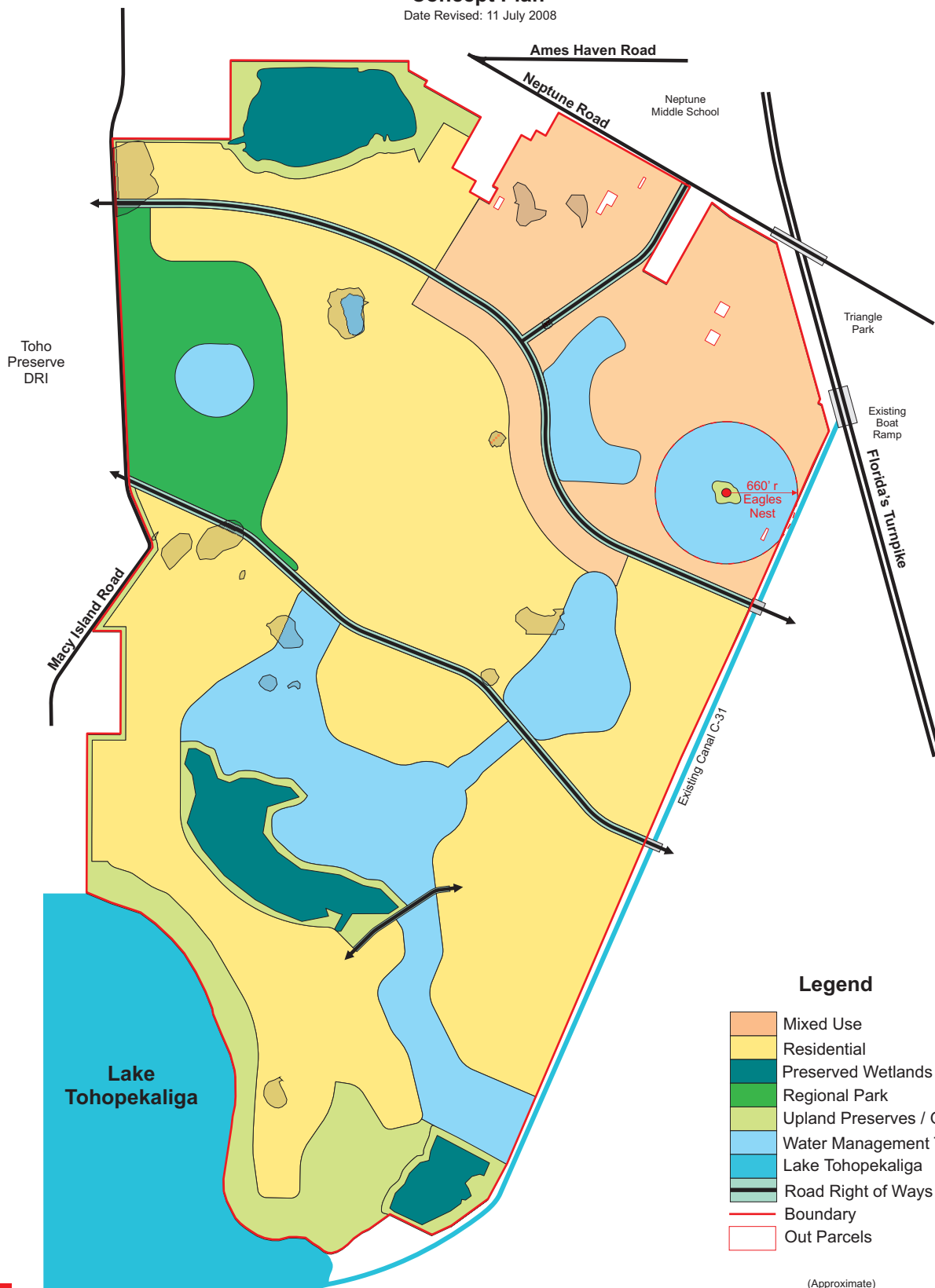
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Exhibit "A"

Proposed Map H

Tohoqua™

Sections 5, 6, 7, & 8, Township 26 South, Range 30 East
Osceola County, Florida
Revised Map H
Concept Plan
Date Revised: 11 July 2008



This map is a Concept Plan only. As such, it is intended to illustrate the current development program as proposed in the Tohoqua DRI Development Order. Any modification to this Concept Plan is subject to the provisions of 380.06, F.S.

EDSA

Exhibit "B"

Staff Comments from TRC

STAFF REVIEW FORMS

APRIL 18, 2007

DRI06-0011 **REGIONAL DEVELOPMENT 192, LLC AND NEWLAND COMMUNITIES (APPLICANTS) REGIONAL DEVELOPMENT 192, LLC (OWNER)**

COMMISSION DISTRICT:

3

REQUEST:

Request to approve the Mariner's Cove Development of Regional Impact (DRI) for a mixed use development consisting of approximately 1185 acres of land to include 1a maximum of 3,220 mixed residential units a maximum of 150,000 square feet of retail/services and office use, and up to 300 hospitality suites. The project also features park and recreation areas, pedestrian/bike trails, preserves and conservation areas, a regional drainage and flood control facility, a community center, public services, an elementary school, new road networking, a transit corridor, a boat ramp and an internal lake system with private docks.

LOCATION:

South of Neptune Road, west of Ronald Reagan Turnpike and the C-31 Canal, north of Goblet's Cove (Lake Tohopekaliga) and east of Macy Island Road in Sections 05, 06, and 26, Townships 25 and 26, and Range 29 and 30.

Staff Report

Comments were brought forward from the January 10, 2007 TRC.

ENGINEERING: **Defer to Planning.** (01/02/07 JH)

ZONING: Reviewers: JQ
Defer to Planning

PLANNING: Reviewers: SCW, CMC

- a. Page 3 of 24 'Plat of Survey': Line Table has an incorrect degree bearing and typo for the Minute symbol (:) instead of ('). 3/5/07 SCW
- b. Consider putting on the cover of the 1st RAI a reproduction of the Map H or the latest overall concept plan for the Lake Toho DRIs with Mariner's Cove outlined, and print the title of the 2nd RAI along its spine. This would facilitate staff review and record-keeping. CMC
- c. Please have the RPC either alert the County when a PDF file of the ADA and first and second RAIs are available on the RPC website or ensure that the County receives at least one copy of the RAI that is unbound (to scan). Please provide any and all copies of future DRI materials for the RPC in PDF as well as print and request that the RPC place copies on its website in a timely manner. CMC

STAFF REVIEW FORMS

TRANSPORTATION

DIVISION:

Reviewers: RZ (4/12/2007), AM (4/12/2007)

- a. 1. RS&H Review, page 27, Item 2 - We agree that providing cost may not be the most important information at this time. However, the applicant did not answer the first part of the question related to capacity, level-of-service, and number of lanes. Providing traffic projections and the design characteristics for the Lake Toho Parkway is essential at this time. Map H indicates a "dual corridor" concept with a combination of a continuous multi-lane and a 2-lane s through the development. Providing traffic projections and proposed design characteristics would further enhance staff's understanding of the intended concept. RZ, AM

PUBLIC SAFETY:

911 ADDRESSING:

SFWMD:

HEALTH:

CITY OF KISSIMEE:

CITY OF ST. CLOUD:

OSCEOLA COUNTY SCHOOL BOARD:

SHERIFF'S OFFICE:

PARKS & RECREATION:

On Following Page

Exhibit "B"

Final ECFRPC
Recommendations

A. Introduction

The Tohoqua Development of Regional Impact (DRI) Application for Development Approval (ADA) has been reviewed to consider whether, and the extent to which:

- 1) The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans.
- 2) The development will significantly impact adjacent jurisdictions.
- 3) The development will adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment (380.06(12)(a), F.S.).

B. Findings and Recommendations

After balancing the identified regionally significant impacts associated with each of the criteria of s.380.06(12)(a), Florida Statutes, and for the reasons presented in the preceding report, it is the recommendation of the East Central Florida Regional Planning Council (ECFRPC) that the Tohoqua DRI ADA may be approved if the following conditions are included as part of the Development Order (DO). These minimum conditions are not intended to address issues of local significance.

1. The Tohoqua DRI project shall be developed in accordance with the information, data, plans and commitments contained in the Tohoqua DRI ADA and supplemental information incorporated herein by reference, unless otherwise provided by the conditions of this DO. The DO shall prevail over any conflicting information, data, plan, or commitments. For the purposes of this condition, the ADA shall consist of the following items:
 - a. Application for Development Approval received November 17, 2006
 - b. First Sufficiency Response received April 5, 2007
 - c. Second Sufficiency Response received July 30, 2007
 - d. Third Sufficiency Response received April 17, 2008

2. The DRI DO shall govern the development of lands totaling approximately 1,184.15 gross acres in Osceola County, as described in Exhibit 1 of the DO. Nothing herein is intended to relieve the Developer of any concurrency requirements as set forth in Florida Statutes, Florida Administrative Code or Osceola County Ordinance.

Matrix

3. The Developer may increase or decrease the amount of a particular land use within the approved development program by using a conversion table, once approved and incorporated into the Development Order as an exhibit, which is based on equivalent peak hour directional trip ends. Use of the conversion table may increase or decrease the total amount of each land use by no more than the amount allowed for in the substantial deviation criteria identified in Chapter 380.06(19)(b) 1-14, Florida Statutes, unless the Development Order is amended to accommodate such a change. Greater changes than those discussed above shall be considered cumulatively, and shall be subject to normal Development Order amendment processes. Additionally, the change must address changes to potable water usage and identify if the potable water capacity and allocation under the applicable consumptive use permit are available. Any time the conversion table is to be used, DCA, ECFRPC, Osceola County and the SFWMD must be provided notice of the proposal at least 30 days in advance of the change. Use of the conversion table will be reported on an individual and cumulative basis and Project impacts documented in the annual report. Any future Notice of Proposed Change (NOPC) shall incorporate any changes due to the use of the matrix.

Land Uses (Convert From)	Land Uses (Convert To)					
	Single Family (DU)	Condominiums (DU)	Elementary School (Students)	Middle School (Students)	Office (KSF)	Retail (KSF)
Single Family (DU)		2.0253	3.9643	6.4018	1.2692	0.2762
Condominiums (DU)	0.4938		1.9574	3.1609	0.6267	0.1364
Elementary School (Students)	0.2523	0.5109		1.6149	0.3202	0.0697
Middle School (Students)	0.1562	0.3164	0.6192		0.1983	0.0432
Office (KSF)	0.7879	1.5957	3.1234	5.0438		0.2176
Retail (KSF)	3.6200	7.3316	14.3507	23.1745	4.5946	

**Sample
Conversions:**

59 Sample Conversions:

60 1. IF you want to convert 100 DU's of Single Family to Condominiums:

61 100 DU Single Family x 2.0253 = 203 DU Condominiums

62 2. If you wanted to convert 50 KSF of Retail to Single Family:

63 50 KSF Retail x 3.6200 = 181 DU Single Family

64 Notes: The development will be limited to maximum and minimum changes. The land use matrix
65 was developed using the p.m. peak hour - peak direction trips generated by the Tohoqua
66 DRI - Phase I. The following summarizes the p.m. peak hour - peak direction trip
67 generation rates used in this analysis:

- Single Family : 0.50 trips per DU
- Condominiums : 0.25 trips per DU
- Elementary School : 0.13 trips per Student
- Middle School : 0.08 trips per Student
- Office: 0.39 trips per KSF
- Retail : 1.81 trips per KSF

68

69 **Archeological Resources**

70

71 4. Project construction personnel shall be notified, through posted advisories
72 or other methods, of the potential for artifact discoveries on the site and to
73 report suspected findings to the project manager. In the event of
74 discovery of artifacts of historic or archaeological significance during
75 project construction, the Developer shall stop construction at the site of

discovery and notify Osceola County and the Division of Historical Resources (DHR) of the Florida Department of State. From the date of notification, construction shall be suspended within a 100-foot radius of the site of discovery for a period of up to 120 days to allow evaluation of the site. The Developer shall provide proper protection of the discovery, to the satisfaction of the DHR.

Natural Resources

Lake Tohopekaliga (Lake Toho) Working Group Recommendations and Tohoqua Site Specific Recommendations

Some of the specific conditions of approval relating to environmental issues apply uniquely to Tohoqua; these are italicized below. All of the remaining DO conditions came from the Lake Toho Environmental Working Group's recommendations, and they also apply to Tohoqua. The goals for each of the Priority Conservation Items from the Working Group are referenced prior to the DO conditions for Tohoqua. Unless stated otherwise, these conditions must be implemented prior to start of construction.

5. **Protect wildlife habitat** – objectives from the Working Group: 1) Sustain connections of native wildlife habitat for multiple species to regional systems, 2) Specify how viable bald eagle nesting habitat will be sustained long-term, 3) Define how to prohibit/control boat traffic (including jet skis and airboats) in snail kite habitat, 4) Design roads that allow wildlife movement.

A. Habitat Conservation and Management Plan:

- 1) The developer must create detailed habitat conservation and management plans for listed species including bald eagle, gopher tortoise (and commensals), eastern indigo snake, wood stork, sandhill crane, snail kite, and Sherman's fox squirrel. *The Resource*

Management Plan submitted for the Tohoqua DRI is a starting document to expand on for this plan. These plans must be approved by Osceola County, with review and input by the USFWS, ACOE, FFWCC, SFWMD and the ECFRPC prior to initiating construction. The Plans shall include:

- a. The location of linkages of native wildlife habitat for multiple species connected to regional systems,
- b. The approach to wetland conservation and enhancement with consideration of off-site wetland systems, and hydrology,
- c. The approach to upland habitat protection, including existing and future eagle nest sites,
- d. Methods for assuring that long-term management will be funded,
- e. Success criteria for wetland conservation, water quality enhancement, water quantity management, and wildlife management,
- f. Monitoring strategies to evaluate progress toward success criteria,
- g. Language for a conservation easement to protect the resources within the boundaries of protected areas,
- h. Goals and objectives for continued environmental education, including materials for Homeowner Association documents,
- i. *A vegetation management plan for the upland buffers adjacent to sandhill crane foraging or habitat areas to assure that they are maintained as suitable foraging habitat for sandhill cranes,*
- j. *Measures to maintain the onsite preserved or restored marshes as habitat for sandhill crane nesting as herbaceous systems preventing encroachment of shrubby or woody vegetation, and*

- 137 k. *A maintenance plan that addresses elimination of Category I*
138 *exotic nuisance species,*
139 l. *A planting plan to restore longleaf pine to the property and*
140 *provide younger replacement live oak within the parks,*
141 *buffers, open space and preserves.*

142
143 *B. Bald eagle protection:*

- 144 1) The developer must designate no development zones (except for
145 stormwater ponds and lakes) within at least a 660 foot-radius zone
146 around active and viable eagle nest trees, unless tolerance of existing
147 infrastructure warrants a lesser radius zone,
148 2) The developer must develop an eagle management plan that can be
149 implemented by qualified professionals and effectively communicated
150 to homeowners associations, CDD's and other long term managers,
151 3) The developer must retain viable bald eagle nesting habitat through
152 the retention of stands of mature (greater than 12" dbh) pine and
153 cypress trees on-site, to the maximum extent practicable as
154 determined by the Osceola County Planning Department. Canopy
155 protection areas should include eagle protection zones, wetland
156 mitigation areas, the Lake Toho Protection Area (as defined in the
157 Section entitled *Protect the Shore of Lake Toho*), common areas, and
158 in commercial lots where they can be maintained in perpetuity,
159 4) The developer must develop a plan for restoring longleaf pines for
160 future bald eagle nests. *The plan shall provide for longleaf pine*
161 *plantings in the two designated areas as identified in the Resource*
162 *Management Plan as well as in upland buffers, parks and open*
163 *spaces; and shall provide for periodic planting schedule to produce a*
164 *broad distribution of ages of pines,*
165 5) The developer must develop specifications for contractors to enable
166 them to minimize loss of trees due to construction disturbance,
167 including a provision to verify that trees proposed for protection are

plainly marked or fenced with construction fencing prior to commencement of tree cutting,

6) The developer must monitor active bald eagle nests and preserved trees to assure protection during the construction process, and

7) The developer must assure that control elevations of stormwater ponds around eagle nests will not adversely affect mature pine and cypress trees that have been retained in the development.

C. Snail kite protection:

1) The developer must create deed restrictions that prohibit jet skis and airboats from being docked or launched from the projects in order to minimize disturbance around and within snail kite nesting habitat, and

2) The developer must provide signage and educational materials for project residents that use Lake Toho in order to discourage encroachment in snail kite nesting habitat.

3) *To reduce the potential for impact to the offsite snail kite nesting area, the developer shall not directly connect to or have boat ramps or lifts that utilize the existing C-31 canal located on the eastern edge of the property for boat access to the lake from the property.*

D. Other wildlife issues:

1) The developer must *establish* on-site conservation areas for gopher tortoise (and commensals) populations unless on-site conservation is not recommended by the FFWCC, or not permissible due to FFWCC rule changes. Gopher tortoise conservation will be located in no more than 3 preserves established to protect the estimated tortoise population on-site in perpetuity. *A summary of the status of permitting and the description of the permitted preserve area shall be submitted with the Annual Report,*

- 197 4) The developer must provide adequate on-site nesting and foraging
198 habitat on the project in which Florida sandhill cranes are known to
199 occur, and
200 5) The developer must provide restrictions that prohibit free-ranging pets.
201

202 E. Road design:

- 203 1) The developer must create provisions for wildlife connectivity across or
204 under roadways. This must include eco-passages that address
205 movement of likely-occurring wildlife, reduced speed limits, signage
206 illustrating the presence of wildlife, and consideration of reduced
207 lighting. On-site linkages must be integrated with the regional
208 transportation network, and planned under the assumption that the
209 future redesign of existing (off-site) roads will allow wildlife movement.
210 2) *Plans for all roadway crossings of the identified Wildlife Corridors shall*
211 *demonstrate to Osceola County, SFWMD, FFWCC and RPC that*
212 *adequate measures as listed above have been taken to allow*
213 *movement of wildlife while minimizing wildlife impact. Identification of*
214 *the implementation of these measures shall be incorporated in an*
215 *updated HMP and presented in the annual report.*
216 3) The developer must contribute a proportionate share of the costs of
217 significant and adversely impacted roads that require off-site eco-
218 passages.
219

220 F. Listed species:
221

222 *Except as otherwise allowable by this Development Order or by permits*
223 *obtained by the Developer from the FFWCC or the USFWS, site*
224 *development related activities shall not result in the harming, pursuit or*
225 *harassment of plant or animal species classified as Endangered,*
226 *Threatened or Species of Special Concern by either the state or Federal*
227 *government in contravention of applicable state or federal laws. Should*

such species be at any time determined to be residing on, or be otherwise significantly dependent upon the project site, the Developer shall immediately notify the local jurisdiction (Osceola County), FFWCC and USFWS and, to the extent required by laws and regulations, the Developer shall cease all activities which might negatively affect that individual or population. The Developer shall provide proper protection, to the satisfaction of all agencies with jurisdiction.

"Harming" and "harassment" as used in this recommendation shall be defined in the same manner as "harm" and "harass" respectively are defined in 50 CFR Section 17.3.

6. Protect/restore wetland systems - objectives from the Working Group:

1) Identify wetlands proposed for impact and restoration, 2) Conserve wetland systems, and 3) Create a strategy for long-term management.

- 1) The developer must specify wetlands that will be impacted and how preserved wetlands will be connected across the site,
- 2) The Applicant's assessment is that the project includes approximately seventy-two (72) acres of jurisdictional wetlands and other surface waters as those terms are defined by the SFWMD and the U.S. Army Corps of Engineers. A majority of the wetlands will be preserved on the property in the area or areas shown as Preserved Wetlands on Map "H". The Preserved Wetlands total approximately sixty-two (62) acres. The balance of the wetlands (approximately ten (10) acres) shown on Map "H" will be filled pursuant to an ERP Permit and a Section 404 Permit to be obtained from the SFWMD and the U.S. Army Corps of Engineers respectively. No filling or other alteration of the wetlands shall occur until the required State and Federal permits have been obtained and the content of the same authorizes the filling of the designated wetlands shown on Map H or

such alternate fill areas as may be agreed upon between the Master Developer and the reviewing agencies of the State and Federal government.

3) Permits authorizing the filling of wetlands have not yet been obtained for any modification of wetland impacts, including allowance or relocation of impacts by either the SFWMD or the U.S. Army Corps of Engineers. Any changes to or increases in wetland impacts as identified in the ADA Third Sufficiency submittal shall be subject to a Notification of a Proposed Change pursuant to paragraph 380.06(19)(d), Florida Statutes, and shall be presumed not to be a substantial deviation unless rebutted by clear and convincing evidence at the public hearing held by Osceola County. The Master Developer will comply with each and all of the terms and conditions of the permits, including the requirements for mitigating the unavoidable losses to the wetlands and will certify compliance with the same in the first and all subsequent Biennial Reports as hereinafter set forth. All reports submitted to either the SFWMD or to the U.S. Army Corps of Engineers pursuant to the terms and conditions of the permits obtained from one or the other or both of them shall be copied to Osceola County for informational purposes only.

4) Preserved wetlands will be integrated with stormwater management systems to provide maximum connectivity so as to maintain or improve wetland hydroperiods.

5) All wetlands identified by the SFWMD and/or the ACOE will have an upland buffer of at least fifty (50) feet on average with a twenty-five (25) foot minimum. Subject only to the permitting and final jurisdictional determinations by both the SFWMD and ACOE, the wetlands of regional significance to which this buffer requirement applies are shown on Map "H." To the extent the processing and obtaining of the permits identified here results in a change in the

jurisdictional boundary of the wetlands on site, such change shall be shown on Map H and afforded the same buffers.

6) If Sovereign Submerged Lands (“SSL”) are determined to occur such that the development program authorized by this Development Order cannot be implemented, then the Master Developer will process an NOPC to address the redesign and/or reduction of the development program so as to reduce and/or eliminate impacts to SSL.

7) The developer must demonstrate why wetlands cannot be mitigated on-site, and prioritize mitigation of impacts: a) on-site, b) in-basin, c) within a mitigation bank that includes the Toho basin,

8) *Wetlands identified for preservation, along with the associated upland buffers, shall be placed under conservation easement dedicated to Osceola County or the SFWMD or 3rd party approved by Osceola County and the SFWMD,*

9) The developer must complete ACOE and SFWMD preliminary wetland delineations as a part of conceptual ERP and/or ACOE permits, and incorporate these determinations in the Habitat Conservation and Management Plan (*Resource Management Plan*). The final determinations, and the Habitat Conservation and Management Plan should be updated with wetland determinations from the ERP construction permit.

10) *The developer must coordinate with the adjacent landowner in determining the final alignment of the two roadways that will extend offsite to the east relative to the offsite wetlands to facilitate minimizing impact to offsite wetlands.*

7. Protect the shore of Lake Toho - objectives from the Working Group: 1) Identify specific measures to protect the shore of Lake Toho, including no-development zones, 2) Protect lakefront canopy, and 3) Define what uses will be allowed in these areas

- 321 1) The developer must designate a Lake Toho Protection Area that
322 includes a 250 foot minimum, 500 foot average, buffer along the Lake
323 Toho lakeshore (elevation 55'), and exclude any structures except
324 common access points and appropriate passive recreation facilities.
325 The 55.0 foot elevation will be identified using GIS mapping, and the
326 Lake Toho Protection Area will be delineated on a project map. *No*
327 *lakefront lots are allowed in this zone*
- 328 2) The developer must specify that below elevation 56.5 (for lands over
329 which the developer holds title), native vegetation will be managed to
330 mimic historic conditions, including the removal of Category I exotic
331 plants,
- 332 3) The developer must provide public open space along Lake Toho (no
333 lakefront lots),
- 334 4) The developer must place a Conservation Easement dedicated to the
335 SFWMD, Osceola County, or other appropriate entity, over the Lake
336 Toho Protection Area (for lands over which the developer holds title).
337 Above the 56.5 foot elevation, the Lake Toho Protection Area may
338 include passive recreation, such as appropriate trails, picnic areas,
339 etc. To the extent acceptable to the SFWMD or Osceola County,
340 these will also be included in the Conservation Easement,
- 341 5) The developer must relocate lake access points that are under their
342 control to avoid snail kite nesting areas,
- 343 6) *No permanent dock facility is allowed on Lake Toho or within the*
344 *canal right-of-way of the C-31 canal.*
- 345 7) *No waterside fueling or storage tanks are allowed,*
- 346 8) *Up to two observation piers will be allowed along the linear park at*
347 *Goblet's Cove. The location of the pier must be approved by the*
348 *USFWS relative to the presence of snail kite nesting and roosting*
349 *activities within Goblet's Cove,*
- 350 9) *No boat lifts or lake access channels are allowed for this project, and*

- 351 10) *No boat access from the property is allowed through the old remnant*
352 *C-31 canal.*

353
354 **8. Enhance water quality and control water quantity** - objectives from the
355 Working Group: 1) Create a comprehensive water quality enhancement
356 plan to improve water quality in Lake Toho, 2) Reduce phosphorus,
357 nitrogen and other pollutants by 25 – 50% (or more) from existing levels,
358 3) Determine the approach to stormwater management including
359 consideration of settling basins, inline storage, treatment trains, and large
360 stormwater management lakes, 3) Reduce the rate and volume of
361 stormwater discharge.

- 362
363 1) The developer must anticipate new SFWMD rules in the Okeechobee
364 basin as well as the implementation of TMDL standards for the Lake
365 Toho basin, and provide for these rules and standards in the
366 stormwater design. Until new stormwater regulations are developed,
367 existing stormwater management requirements for treatment and
368 attenuation volumes will be exceeded by 30%,
369 2) The developer must address pesticide and nutrient control at the
370 source, including the identification of ways to substantially reduce the
371 need for chemicals,
372 3) The developer must establish baseline conditions, and monitor water
373 quality until 5 years after the project's completion, or as directed by
374 the SFWMD or FDEP,
375 4) The developer must implement water conserving, green design
376 principles for landscapes and buildings to include xeriscaping and
377 water reuse; and consideration of rain gardens, green roofs,
378 cisterns, pervious pavement, etc., and
379 5) The developer must consider volumetric assessments to assure that
380 stormwater discharges to Lake Toho and downstream receiving
381 water bodies are not increased.

- 382 6) *The developer shall design and develop the property so as to not rely*
383 *on the existing offsite pump operation (located on the Toho Preserve,*
384 *aka Westlake Cove DRI property) to maintain existing onsite water*
385 *levels or for the recovery of the stormwater management system.*
386

387 **9. Identify long-term funding sources** - objectives from the Working
388 Group: 1) Define how long-term conservation and management will be
389 funded.
390

- 391 1) The developer must define and implement a plan for the long-term
392 funding and management of conservation measures on-site. These
393 measures would include establishing baseline conditions for water
394 quality and wetland function; wetland conservation, restoration and
395 enhancement; wildlife habitat restoration and management; long-term
396 monitoring, and contingency planning. (Management funds must be
397 secure, and not vulnerable to a future vote of residents that may not
398 prioritize management of conservation lands.)
399

400 **10. Assess impacts of external roads** - objectives from the Working Group:

- 401 1) Create a Master Plan that maximizes internal capture of vehicle miles
402 and establishes a network of multi-modal transportation facilities, 2) For
403 those DRIs that elicit the need for external road improvements, initiate
404 discussions of corridor design with transportation agencies for future
405 improvements.
406

- 407 1) The developer must implement a network of multi-modal
408 transportation strategies; connected local streets; cycling facilities;
409 walkable community design; and the linkage of all the DRI properties
410 with a transit, bicycle, and pedestrian system that would connect to
411 downtown Kissimmee and St. Cloud,

- 2) The developer must direct future growth to identified urban areas, compatible with the existing and proposed regional transportation network,
- 3) The developer must achieve the internal capture of vehicle miles as discussed in the ADA and defined in the Transportation Methodology, and

11. Facilitate future smoke management - objectives from the Working Group: 1) Identify critical smoke dispersal areas (CSDAs), and keep incompatible uses out, 2) Create a draft of Codes, Covenants and Restrictions (CCRs) highlighting issues related to smoke management, 3) Develop the protocol for informing individuals that they will be exposed to smoke.

- 1) The developer must keep incompatible uses (schools, roads, hospitals, nursing homes, etc.) out of CSDAs; if unavoidable, sensitive land uses will be clustered rather than spread across the CSDA, to reduce management problems associated with these uses,
- 2) The developer must create a draft of Codes, Covenants and Restrictions (CCRs) to support recommendations on smoke management, and make these restrictions available at the time of review of the contract for sale,
- 3) Contracts for sale of lands in areas likely to be affected by smoke will specify that smoke from prescribed fire is anticipated to occur, and shall include a specific waiver of rights to challenge, object, sue, or otherwise interfere with the conduct of prescribed burning,
- 4) The developer must develop the protocol for informing individuals that purchase property, and/or live and work within smoke sensitive planning zones that they will be exposed to smoke, and
- 5) The developer must define measures to educate the public about the use of fire; and their role in the fire management program including

consideration of road placement and design, signage, “firewise” landscaping, natural buffer and open space management and emergency access points.

12. Other issues

- 1) The developer shall initiate a program for residential and commercial properties to restrict fertilizer use on established lawns, landscaped areas, and CDD or HOA common properties. This program should be developed in accordance with the Florida Yards and Neighborhoods program, and the model landscaping ordinance developed cooperatively by FDEP and others (see <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>),
- 2) *To minimize dependence on grounds irrigation and promote retention of wildlife habitat, native, drought tolerant, low maintenance vegetation shall be utilized in site development,*
- 3) *Park areas identified on Map H shall have a maintenance and tree replacement program that is incorporated within the Covenants and Restrictions,*
- 4) The developer must establish a plan to implement energy efficiency standards and low impact development practices,
- 5) The developer must consider the use of “Conservation subdivision” designs, shrinking individual lot sizes and lawn areas and the use of smaller lots adjacent to common preserved open spaces unless Osceola County minimum density requirements render this impractical,
- 6) Clubhouses and community centers built by the developers of the project shall be LEED or FGBC certified,
- 7) “Dark skies” measures to reduce light pollution shall be implemented (so long as it is not inconsistent with the Osceola County Land Development Code),

- 474 8) The developer shall provide non-motorized vehicular public access
475 for fishing, and passive use of public areas around Lake Toho.
- 476 9) *The developer shall employ water conservation measures to*
477 *minimize the water usage demands of the Tohoqua DRI. A*
478 *Waterwise landscaping approach shall be used throughout the*
479 *development that includes at least 75% of the landscaped vegetation*
480 *being planted in drought-tolerant or native vegetation varieties. No St.*
481 *Augustine grass will be used. The developer shall prepare a water*
482 *conservation plan that conforms to the guidelines of the South Florida*
483 *Water Management District (Consumptive Use Permit Applicant's*
484 *Handbook) and shall provide it to the District for review and approval*
485 *prior to any site plan approval by Osceola County.*
- 486
- 487 10) *As a demonstration project and to promote the conservation of water,*
488 *50% of the model homes shall utilize 100% Xeriscape principles.*
- 489
- 490 11) *To reduce the demand on the Floridan aquifer resulting from the*
491 *Tohoqua DRI, conservation/ultra-low water-saving devices shall be*
492 *installed throughout the entire project and the use of lower-quality*
493 *(nonpotable) sources of irrigation water used to the maximum extent*
494 *possible. These alternate sources include reclaimed water provided*
495 *by the water utility, use of surface water and stormwater runoff and,*
496 *lastly, lower-quality groundwater prior to any use of potable water for*
497 *irrigation purposes.*
- 498
- 499 12) *To meet the non-potable water use demands of the project, the*
500 *development shall use the following sources, in order of priority, for*
501 *surface irrigation of common and private areas, to include parks,*
502 *commercial, institutional and residential areas, unless prohibited by*
503 *the Florida Department of Environmental Protection, SFWMD, or*
504 *other regulatory agency:*

- *Treated wastewater made available to the property,*
- *Surface water stored on-site in surface water storage ponds,*
- *Potable water used on residential lots if no lesser quality source, but shall be converted to a lesser quality when it becomes available.*

13) The developer shall construct and maintain a dual distribution system to distribute both potable water and lower-quality water, such as reclaimed water, to each water user in the Tohoqua DRI.

The developer shall cooperate with the City of St. Cloud and the SFWMD to supplement the city's reuse system with captured storm water to meet a portion of the irrigation requirements of the project.

Transportation

13. For purposes of the transportation conditions, the Tohoqua DRI shall be divided into the following vehicular traffic phases based on reaching any of the following thresholds or years, as follows:

Phase	Daily Trips	Daily Trips Cumulative	External Daily Trips*	External Daily Trips* Cumulative	Peak Hour Trips	Peak Hour Trips Cumulative	External Peak Hour Trips*	External Peak Hour Trips* Cumulative
Phase 1 (2011)	18,396	18,396	16,174	16,174	1,921	1,921	1,711	1,711
Phase 2 (2016)	14,510	32,906	13,072	29,246	1,696	3,617	1,546	3,257

*Includes Passer-by Trips but not internal trips

14. Monitoring and Modeling Methodology. Prior to the initiation of each phase beginning after Phase 1 as identified in the preceding paragraph, the developer shall conduct a monitoring/modeling program. This program shall ascertain the Level of Service (LOS) on facilities where the Tohoqua

DRI is estimated to contribute an amount of traffic greater than or equal to 5 percent of the adopted LOS service volume. The methodology of the monitoring/modeling program shall be agreed upon by Osceola County, the East Central Florida Regional Planning Council (ECFRPC), the City of Kissimmee, the City of St. Cloud, the Florida Department of Transportation, the Orlando Orange County Expressway Authority, Florida's Turnpike, LYNX, the Florida Department of Community Affairs and the Developer. The depth of each monitoring and modeling effort shall be similar to that required within an Application for Development Approval but shall be consistent with the requirements of Osceola County Concurrency Management Systems as it relates to facilities within that jurisdiction. All studies and monitoring/modeling programs shall be consistent with the ECFRPC's methodology. Empirical data will be required to be collected for the monitoring and modeling program on facilities where it is estimated that the project contributes an amount of traffic greater than or equal to five percent (5%) of the adopted LOS maximum service volume. This shall include an origin-destination survey to verify project trip distribution on the external roadway network no earlier than 75% of Phase 1 and prior to Phase 2. A trip length study shall also be conducted to verify model results. In the event that all parties cannot come to agreement on the methodology, the ECFRPC, FDOT and Osceola County shall be the final arbiters. Osceola County's decision shall be final as it relates to Osceola County facilities, the FDOT's decision shall be final on state facilities and the ECFRPC's decision shall be final as it relates to all other facilities. This requirement shall be repeated prior to the completion of Phase 2. The study at buildout will be for informational purposes only.

15. The facilities to be monitored/modeled for the next phase shall include, but shall not be limited to, those segments of the regional roadways within this list and one segment beyond where the Tohoqua DRI is estimated to contribute a cumulative amount of traffic greater than or equal to five

percent of the adopted LOS service volume. The analyzed facilities will include signalized intersections and link analyses of collector and higher classified roadways and interchange ramps.

Osceola County, the East Central Florida Regional Planning Council (ECFRPC), the City of Kissimmee, the City of St. Cloud, the Florida Department of Transportation, the Orlando Orange County Expressway Authority, Florida's Turnpike, LYNX, the Florida Department of Community Affairs shall have the right to make reasonable requests for additional information from the Developer to verify adherence to these provisions. The developer shall supply adequate information toward compliance with these requirements.

Candidate Roadways* for Monitoring/Modeling Study

<i>Boggy Creek Road</i>	<i>Simpson to Buenaventura Blvd.</i>
<i>Brown Chapel Road</i>	<i>Lakeshore Blvd to 5th St.</i>
<i>Canoe Creek Road</i>	<i>US 192 to Project internal roadway</i>
<i>Deer Run Road</i>	<i>Canoe Creek Rd. to Hickory Tree Rd.</i>
<i>Emmett St</i>	<i>John Young Parkway to Broadway</i>
<i>Florida's Turnpike</i>	<i>SR 528 to SR 60</i>
<i>John Young Parkway</i>	<i>Columbia Ave. to US 192</i>
<i>Kissimmee Park Rd</i>	<i>US 192 to Old Canoe Creek Rd.</i>
<i>Lakeshore Blvd</i>	<i>Boggy Creek Rd. to Neptune Rd.</i>
<i>Laurence Silas Blvd.</i>	<i>Neptune Rd. to Oak St.</i>
<i>Main St.</i>	<i>US 192 to Drury</i>
<i>Michigan Ave.</i>	<i>US 192 to New Nolte Rd.</i>
<i>Neptune Rd.</i>	<i>US 441/Broadway Ave. to US 192/US 441</i>
<i>New Nolte Rd.</i>	<i>Kissimmee Park Rd to Canoe Creek Rd.</i>
<i>Oak St.</i>	<i>Central Ave. to Main St.</i>
<i>Old Canoe Creek Rd.</i>	<i>Kissimmee Park Rd. to CR 523/Canoe Creek Rd.</i>
<i>Partin Settlement Rd.</i>	<i>Neptune Rd to Lakeshore Blvd.</i>

<i>Shady Lane</i>	<i>US 192/US 441 to Neptune Rd.</i>
<i>Simpson Rd.</i>	<i>US 192 to Boggy Creek Rd.</i>
<i>US 17-92</i>	<i>Columbia Ave. to Martin Luther King Blvd.</i>
<i>US 192/US 441</i>	<i>Hoagland Blvd. to Narcoossee Road</i>
<i>Thacker Ave.</i>	<i>Columbia Ave. to US 192</i>
<i>Internal Spine Roads</i>	<i>Neptune Road to South end of Green Island DRI</i>

* Intersection analyses of all roadways and ramps shall be included

16. Monitoring and Modeling Results/Mitigation

I. The Tohoqua DRI shall not commence beyond phase 1 (an equivalent of 1,711 external peak hour trip ends) into Phase 2 when service levels are below the minimum service level adopted in the applicable local government's comprehensive plan during the peak hour and the project contributes, or is projected to contribute with the next phase of traffic, five percent of the adopted LOS service volume of the roadway or intersection as determined by the monitoring program required in the preceding condition, unless mitigation measures and/or improvements are secured and committed for completion of construction during the phase in which the impacts occur. The schedule of required roadway improvements shall be tied to the development level when the improvement is needed within each subphase. The Development Order shall be amended to incorporate the required improvements and the commensurate trip level by which the improvement is needed to support project development.

II. For the purposes of this development order, adequate "secured and committed" mitigation measures shall include one of the following:

(a) A roadway improvement scheduled for construction within the first three (3) years of the appropriate local government's adopted comprehensive plan capital improvement element (or as otherwise provided in the

595 applicable jurisdiction's capital improvement element); A
596 roadway improvement scheduled for construction within the
597 first three (3) years of the Florida Department of
598 Transportation's five-year Work Program.

599 (b) A binding financially secured and irrevocable commitment by
600 the Developer or other appropriate persons or entities for the
601 design, engineering, land acquisition and actual construction
602 of the necessary improvements (with the posting of a cash
603 bond, surety bond, irrevocable letter of credit, escrow account
604 or other security in a form acceptable to the agency of
605 jurisdiction) within the next three years and incorporated by
606 reference into the development order.

607 (c) Any other mitigation option specifically provided for in this
608 development order.

609 (d) Any other mitigation option permitted by law, including a local
610 government development agreement consistent with Chapter
611 163, F.S., which ameliorates the projected impact and is
612 incorporated into the development order by amendment.

613 These mitigation measures shall occur by the required threshold in order for
614 the project to proceed through the balance of the applicable phase. If the
615 Developer can demonstrate that a portion of a phase or subphase does not
616 adversely affect the Regional Roadway network as determined by the
617 monitoring and modeling tests discussed above, then the Developer may
618 proceed with that portion of the phase (and only that portion).

619 17. In the event that a roadway widening is identified which is not compatible
620 with adopted policy of the FDOT or local government (e.g. constrained),
621 the Developer, Osceola County, or the party having either maintenance or
622 jurisdictional responsibility for the facility, together with the ECFRPC, shall
623 determine alternate mitigation solutions to provide for the movement of
624 people.

625 18. The mitigation plan for impacts to US 192 and a proportionate share
626 agreement must be agreed to and executed prior to construction of phase
627 1.

628 19. Toward the achievement of the objectives in the transportation conditions,
629 an agreement(s) among Osceola County, the City of Kissimmee, the city
630 of St. Cloud, the Florida Department of Transportation, the Orlando
631 Orange County Expressway Authority, LYNX, Florida's Turnpike and the
632 Developer may be entered into within twelve months of the issuance of a
633 development order for this project by Osceola County. Said agreement(s)
634 shall address and clarify such issues related to equity in the application of
635 collected fees for transportation improvements. Application of fees shall be
636 on a fair-share basis with respect to the improvements to be provided and
637 not solely on the basis of impact fees. However, such an agreement
638 would not alter or waive the provisions and requirements of the other
639 conditions of the Development Order as a mitigative measure for the
640 transportation impacts of the Tohoqua DRI. In the event that one of the
641 designated parties to the agreement (other than the Developer) fails to
642 execute said interlocal agreement(s) within the specified time, then the
643 developer may proceed with the project based upon the
644 monitoring/modeling schedule and all other recommendations specified
645 herein as it affects the non-participating party. Separate agreements may
646 be entered into with one or more parties and the Developer.

647 20. The following state and regionally significant roadway segments are
648 projected to be both significantly impacted by traffic from the Tohoqua DRI
649 development and to operate below the adopted level of service standard.
650 Mitigation must be in place prior to Tohoqua entering the designated
651 phase unless the results of the monitoring and modeling study document
652 that mitigation is not required for the amount development requested for
653 that phase or sub-phase. Alternative improvements may also be
654 presented based on future monitoring and modeling study results. This
655 list shall be amended based upon the results of the monitoring and

656 modeling study as necessary and incorporated into the development
657 order.

<u>Phase 1</u>	<u>Improvement</u>
Intersection of Broadway & Neptune Road/Drury Avenue	Add additional SB left turn lane
Intersection of US 192 & Neptune Road	Add additional EB and WB through lanes
Intersection of SR 192 & Shady Lane	Add additional NB and SB through lanes
Neptune Road & Shady Lane extension	Add additional NB right turn lane
Boggy Creek Road & Simpson Road/Fortune Road	Add dedicated EB right turn lane, additional SB left turn lane and additional SB through lane
US 192 from Boggy Creek Road to Shady Lane	Add additional lanes in each direction (8 lane divided) (or alternative capacity improvements)
US 192 from Neptune Road to Columbia Avenue	Add additional lane in each direction (6 lane divided)
Simpson Road from Boggy Creek Road to Florida Turnpike (US 192)	Add additional lanes in each direction (4 lane divided)
<u>Phase 2</u>	<u>Improvement</u>
Boggy Creek Road from Simpson Road to Buenaventura Boulevard	Add additional lanes in each direction (4 lane divided)
Kissimmee Park Road from US 192 to Neptune Road	Add additional lanes in each direction (6 lane divided)
Neptune Road from Lakeshore Blvd. to	Add additional lanes in each

Project Entrance	direction (6 lane divided)
Neptune Road from Kissimmee Park Rd. to US 192	Add additional lanes in each direction (6 lane divided)
Narcoossee Road from US 192 to Boggy Creek Road	Add additional lanes in each direction (4 lane divided)
Shady Lane from US 192 to Neptune Road	Add additional lanes in each direction (6 lane divided)
US 192 from Thacker Ave to Shady Lane	Add additional lanes in each direction (8 lane divided) (or alternative capacity improvement)
Oak Street from Main St. to John Young Parkway	Add additional lanes in each direction (6 lane divided)
Donegan Ave. from John Young Parkway to Orange blossom Trail (US 441)	Add additional lanes in each direction (4 lane divided)
Main Street (US 441) from Donegan Avenue to US 192	Add additional lanes in each direction (6 lane divided)

658

659 21. If the monitoring/modeling results as set forth hereinabove show that
660 improvements must be made to roadway facilities, and if mitigation is not
661 provided as set forth in these conditions or as otherwise required pursuant
662 to 9J-2.045(7), then prior to any construction of future phases and subject
663 to the provisions of Section 380.06(15)(e), Florida Statutes, the developer,
664 Osceola County, and the entity with jurisdiction over the roadway facility
665 may enter into an agreement which ensures that:

- 666 a. a proportionate share payment is made by the developer to the
667 appropriate entity/(ies) to mitigate project impacts
- 668 b. said proportionate share payment shall be used by the appropriate
669 entity only for the design, engineering, right-of-way purchase,
670 permitting and/or construction of improvement to the
671 segments/intersections for which the payment is made; and
- 672 c. said proportionate share payment by the developer constitutes

adequate provision for the public facilities needed with respect to the road segments to accommodate the cumulative impacts of the project through the phase for which the fair share was calculated, as required by Section 380.15(e)(2), Florida Statutes. All such proportionate fair share agreements shall be included in this development order by amendment pursuant to Section 380.06(19), F.S. The formula to be used to determine proportionate share contribution is as follows:

$$\frac{(\text{DRI Trips})}{(\text{SV Increase})} \times \text{Cost} = \text{Proportionate Share}$$

For this formula, DRI Trips is the cumulative number of trips from the development expected to reach the roadway during the peak hour from the phase under development. SV Increase is the change in peak hour maximum service volume of the roadway resulting from construction of the improvement necessary to maintain the desired level of service; and Cost of Improvement is the cost (at the time of Developer payment) of constructing an improvement necessary to maintain the desired level of service, including all improvement associated costs (engineering design, right-of-way acquisition, planning, engineering, inspection, and other associated physical development costs directly required and associated with the construction of the improvement) as determined by the governmental agency having maintenance obligations over the roadway.

22. Notwithstanding any provision contained herein to the contrary, except as specifically agreed in writing, Osceola County, and the entity with jurisdiction over the roadway facility shall have no financial responsibility to contribute to or participate in the funding of the design, engineering, permitting, and/or construction of roadway improvements.

23. The monitoring and modeling required prior to each phase or subphase shall be used to verify impacts from previous phases and to more accurately estimate probable impacts from later phases. If necessary, the

proportionate share amount will be adjusted to reflect actual impacts from a phase and the more accurate information, which will result from the estimates for later phases; provided, however, that any impacts from prior phases which have been mitigated in accordance with any of the methods set forth in this Development Order shall not be included in any subsequent proportionate share calculations. If it is verified that the roadway improvements mentioned above are still needed, then the project shall not proceed into later phases until either the proportionate share payment is made or the needed improvements are scheduled for construction in the applicable entities' work program within the first three years from the date when impacts are estimated to be significant and adverse.

24. If the parties cannot reach agreement independently prior to the date when impacts are estimated to be significant and adverse, or if so desired by the parties at any time, then the issues in dispute shall be submitted to the ECFRPC for either voluntary mediation pursuant to its adopted dispute resolution processor to binding arbitration pursuant to the rules and procedures of the American Arbitration Association (AAA). The solutions recommended as a result of this process shall be implemented and the development order amended pursuant to Section 380.06(19), Florida Statutes, to include these solutions.

25. In addition to the Monitoring and Modeling (M&M) prior to Phase 2, the Developer shall participate with the other DRI projects on the east side of Lake Tohopekaliga to perform a Biennial Monitoring and Modeling (BM&M) beginning in 2011 and continuing to project buildout and shall pay their proportionate share of said BM&M. The purpose is to provide for ongoing planning for implementation of transportation improvements to serve this growing area. Other DRI projects in the vicinity of Lake Tohopekaliga will also be required to participate and fund their proportionate share in the BM&M. The BM&M shall be based on the following principles:

- 734 A. Have a methodology approved by the same entities as the M&M which is
735 updated every two years and measure impacts for a period of five years in
736 the future unless different time frames are agreed to in the methodology.
- 737 B. The consultant for the Developers shall respond to questions in a similar
738 fashion as required in the M&M.
- 739 C. Conform to professional standards and address those questions contained
740 in Question 21 of the DRI Application.
- 741 D. Be used to measure the impacts from all projects as a whole and to
742 ensure that required improvements are scheduled to ameliorate
743 transportation deficiencies. The results shall not stop any individual
744 participant from developing through the phase approved in their M&M,
745 however, at the county's discretion, the county may require a
746 proportionate share payment where significant and adverse impacts are
747 evident as defined within the Development Order.
- 748 E. Shall consider alternative travel modes in the mitigation of impacts.
- 749 F. Osceola County shall be responsible for determining the scheduling and
750 refinement of these provisions.
- 751 26. In order to provide safe access and to preserve operational capacity, left
752 and right turn deceleration lanes shall be installed by the developer at all
753 project entrances on collector and arterial roadways as determined by
754 Osceola County. The Developer and Osceola County shall confirm the
755 need for and the cost of signalization at the Project entrance(s) consistent
756 with policies of the appropriate government entity and when nationally
757 recognized warrants are met. Signal costs at project entrances are the
758 financial responsibility of the Developer through project buildout.
- 759 27. A dual system of roadways generally traversing the project northwest to
760 southeast shall be incorporated into the design of the project. It is
761 understood that Osceola County will incorporate the provisions of their
762 comprehensive plan to provide for a network of roadways in a traditional

763 neighborhood design fashion. This developer shall cooperate in this
764 effort. If changes in the major transportation infrastructure on Map H are
765 made as a result of this effort, they shall be included in the biennial report.
766

767 28. In the interest of safety, and to promote alternative forms of transportation,
768 the Developer shall provide the following bicycle and pedestrian systems:

769 A. A primary 14 foot wide recommended 10 foot minimum paved trail system
770 shall traverse the project which will meet with trails within adjacent
771 properties on the southeastern property boundary and to the northwest to
772 enter into the Toho Preserve DRI. The trail or 14 foot trail connection shall
773 be provided along the length of the lakeshore, to parks and to proposed
774 public schools on and off site. Secondary trails shall connect to this main
775 trail. Construction standards shall conform to latest state standards and
776 criteria in the Florida Bicycle and Florida Pedestrian Facilities Planning
777 and Design Handbooks.

778 B. The on-site bicycle systems shall be connected into any adjacent external
779 bicycle systems existing at the time of construction.

780 C. Covered walkways shall be designed into the front of non-residential
781 structures to the maximum extent practicable.

782 D. In all areas of Tohoqua, where cycling will be accomplished on both
783 sidewalk/bikeways and streets, appropriate signage identifying bike routes
784 will be installed.

785 E. Special consideration shall be given to bikeways connecting neighboring
786 residential areas to employment and commercial areas.

787 F. Bicycle support facilities (e.g., parking and lockers) shall be provided at
788 commercial areas and all work areas. Shower facilities at workplaces are
789 encouraged.

790 G. Improvements to area roadways should be encouraged to incorporate
791 bicycle and pedestrian facilities. New roadways or reconstructed

roadways approaching the site shall include bicycle facilities.
Comment to Osceola County: It is recommended that the comprehensive plan reflect the inclusion of a primary bicycle pedestrian plan that connects the village centers, lakefronts and schools for all developments within the Lake Toho area.

29. Prior to the initiation of Phase 1, the Developer shall contribute \$33,333 toward the cost of the \$200,000 total cost, to fund a study administered by the City of Kissimmee to identify multimodal alternatives that can be used by the applicant in place of roadway widening within the City's proposed Multimodal Transportation District. The analysis of alternatives will focus on transit as a primary alternative with additional analysis on the potential for pedestrian and cycling infrastructure, parallel road widening, or new street connections as mitigation strategies. The transit component of the study will be used to assess potential bus rapid transit (BRT) alignment alternatives, identify service characteristics for the BRT route, estimate ridership, estimate capital, operating, and maintenance costs, and determine a proportionate share funding strategy. The study will be designed to meet any criteria necessary to qualify for state and federal transit funding through New Starts, Small Starts, or other potential revenue sources. LYNX, Osceola County, the FDOT and the ECFRPC shall be invited to participate in the determination of study parameters and given a copy of the final product document. The study will be completed at least one year prior to the initiation of Phase 2 and will be overseen by a steering committee. The steering committee will include a representative from the City of Kissimmee, Osceola County, the City of St. Cloud, the Florida Department of Transportation, Lynx, and DRI developers. The committee will assist the City of Kissimmee in developing the scope and methodology and will periodically review study components during the study process. Study findings and recommendations for DRI mitigation in Phase 2 will be submitted to the Osceola County Board of County

Commissioners and the City of Kissimmee City Commission for review and acceptance.

30. Prior to the initiation of Phase 2, the regional traffic model shall be used to identify roadway segments within the City of Kissimmee with significant traffic impacts, where significance is defined as a contribution of traffic from the DRI equal to or greater than five percent of a roadway segment's capacity at the adopted level of service. For any of these roadway segments and adjacent intersections projected to also have adverse impacts, defined as carrying traffic greater than the capacity at the adopted level of service, the applicant shall be responsible for contributing a proportionate share equal to the cost of needed roadway improvements to mitigate the significant and adverse impacts. Potential mitigation projects may include but shall not be limited to the following:

- A. Implementation of the proposed bus rapid transit (BRT) based on the results of the study identified in Recommendation 1;
- B. Design, land acquisition, or construction of the City's Intermodal Transportation Center;
- C. Parallel local or collector road connections to relieve traffic from major thoroughfares;
- D. Pedestrian, cycling, or transit capital improvements as identified through the City's MMTD analysis to achieve an improved multimodal level of service; or
- E. Widening existing roads where feasible and appropriate.

31. In order to provide alternative modes of transportation, one of the two spine roadways shall include an exclusive right of way for transit adequate to allow for two way traffic through the Tohoqua site. In addition, the following transit related actions are required:

- A. Bicycle lockers or bicycle racks, transit passenger shelters and transit parking bays shall be constructed where necessary to

852 augment and facilitate the operations of transit service to the
853 site.

854 B. Transit pull-out bays and transit shelters as required by the local
855 government and LYNX on-site shall be constructed by the
856 Developer.

857 C. A site shall be provided for multiple future transit stops to
858 accommodate buses at a location determined by LYNX in
859 consultation with Osceola County and the Developer at site plan
860 approval.

861 D. The Developer shall enter into an agreement with LYNX in order
862 to determine the appropriate number and location of pull-out
863 bays, transit shelters, covered walkways and their location and
864 the site and size of a future transit super stop if determined by
865 LYNX to be appropriate for the estimated ridership
866

867 32. The Developer shall promote and encourage variable work hours and
868 flextime participation by on-site employers. The Developer shall make
869 known to tenants and residents that the Tohoqua DRI project has access
870 to an existing ride-sharing program operated by LYNX. Transit and
871 current ride-sharing information shall be prominently displayed in all public
872 gathering areas, in employment centers and other areas as suggested by
873 LYNX and Osceola County. Tenants and owners within the employment
874 centers shall be encouraged to provide preferential parking for
875 vanpools/carpools. Transit access on public right of way, if necessary
876 shall be provided to meet LYNX specifications to facilitate transit to the
877 site. Prior to Phase 2, the Developer (or Property Owner's Association)
878 shall designate a part-time ride sharing coordinator who is responsible to
879 working with the area transit provider, conducting employee ridesharing
880 campaigns within the project, publicity, processing applications,
881 distribution information (including transit information), etc. If this position

882 is shared with other DRI developers on the east side of Lake Toho, a full-
883 time coordinator shall be hired.

884 33. The Developer shall coordinate with LYNX and property owners to ensure
885 the provision of park and ride spaces on site and construct an area for use
886 as a rideshare lot to lessen the overall impacts on regional roadways.
887 Spaces for at least 100 vehicles shall be provided and may be shared with
888 parking for commercial land uses. The park and ride spaces shall be
889 proximate to the bus transit stops when established. Park and ride spaces
890 shall be aggregated into groupings of not less than 25 spaces per
891 designated park and ride area, which shall be indicated with appropriate
892 signage. The Developer shall coordinate with Osceola County, FDOT and
893 LYNX to accomplish these requirements at the time of site development.
894 Fewer spaces may be provided if Osceola County and LYNX determine
895 that adequate park and ride spaces are being provided elsewhere within
896 the Lake Toho area.

897 In order to minimize impacts to the roadway network, parcels within the
898 Tohoqua DRI property shall, subject to environmental constraints, be
899 interconnected to the maximum extent feasible as determined by Osceola
900 County. The development will generally be connected to existing
901 neighborhoods and will tie into local streets, where feasible and as deemed
902 appropriate by the county. The Developer shall cooperate with any county
903 supported efforts to continue roadways from or through the site with other
904 roadway facilities that are hereafter endorsed by Osceola County.

905 **Schools**

906 34. School provisions shall be as follows;

907 A. The Tohoqua DRI shall comply with the Osceola County Public Schools
908 Facilities Element (PSFE) and Concurrency Management System (CMS),
909 when adopted by the Board of County Commissioners. Residential
910 building permits shall not be approved until the PSFE and CMS have be
911 adopted by Osceola County and a Concurrency Mitigation Plan/Funding

Agreement for the Tohoqua DRI or the East Lake Toho/South Lake Toho Planning Districts (the Concurrency Mitigation Plan/Funding Agreement may also be know as a Master School Siting Plan/School Funding Agreement) has been proffered to and approved by the Osceola County School Board and the Osceola County Board of County Commissioners. Should Osceola County be prohibited or delayed by legal action from adopting or implementing the PSFE and CMS, development permits may be issued by the County pursuant to then existing land development and concurrency management regulations.

B. Both Osceola County, through the Board of County Commissioners, and the School Board of Osceola County (SBOC) have a strong preference for the implementation of a Master School Siting Plan encompassing the East Lake Toho/South Lake Toho Planning Districts and a Master School Funding Plan and Agreement between the SBOC and the major property owners within the East Lake Toho /South Lake Toho Planning Districts.

C. At any time the Master Developer or developer elects to convert commercial land use to residential land use via the land use conversion matrix, the additional impacts to the public school system shall be reviewed and addressed by the School District of Osceola County.

D. In the event that the Master Developer or any special district applicable to the Tohoqua DRI, the Osceola County School Board and the Osceola County Board of County Commissioners enter into an agreement governing the provision of school for the Tohoqua DRI, the provisions of the agreement shall pre-empt any inconsistent provisions of this Development Order. School facilities shall be located in accordance with any such agreement.

Energy

35. Construction standards shall meet the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) program, the Florida Green Building Coalition, the Green Building Initiative's Green Globes program, or any other nationally-recognized, green building system that is approved by the Department of Management Services DMS (DMS).

36. Equipment and appliances shall, at a minimum, meet the ENERGY STAR standard.

37. Construction shall be designed to meet, at a minimum, Water Star standards. (Developed by the SJRWMD)

38. "Dark skies" measures shall be implemented.

Public Safety

39. Provisions for at least one public safety facilities should be incorporated into the Development Order by Osceola County unless Osceola County determines that adequate provisions are being provided elsewhere within the Lake Toho area. The exact locations shall be determined through consultation with the Osceola County Emergency Services Department.

Affordable Housing

40. The Affordable Housing Analysis prepared for the TOHOQUA DRI Application for Development Approval using ECFRPC approved methodology concluded that the Project has no affordable housing mitigation requirements for Phase 1. Affordable housing may be required in Phase 2 of the TOHOQUA development. The methodology to determine the number of and product types of on-site affordable housing units that may be required in Phase 2 will be governed by amendments to the Osceola County Land Development Code. However, if Osceola County has not adopted amendments to the Osceola County Land Development Code that deal with affordable housing prior to the commencement of Phase 2, then the Master Developer shall conduct a study using the then current ECFRPC Affordable Housing Methodology in

order to determine whether and to what extent the TOHOQUA Project must mitigate for affordable housing deficiencies identified as a result of the referenced study. If mitigation is required, the preferred mitigation is construction of “workforce” housing which for this purpose is defined as housing that is attainable by those persons whose incomes fall between eighty percent (80%) and one hundred thirty percent (130%) of Osceola County’s Average Median Income. To satisfy this condition, the Master Developer will target up to ten percent (10%) of the remaining units within Phase 2 to be constructed to serve this segment of the population within Osceola County. Notwithstanding the foregoing, nothing contained herein shall preclude other alternatives being proposed and agreed to by the Master Developer and the County to satisfy the affordable housing mitigation requirements determined after Phase 1 to be required pursuant to this provision.

Annual Reporting

41. The developer shall conduct an annual report for the first five years and biennially thereafter for the life of the development order. In the event portions of the property are sold to one or more other parties for development purposes, then the developer shall retain the responsibility for seeing that the annual report is duly submitted and address the development on the entire property. The developer shall include in all land contracts executed after the date of this development order, language requiring buyers and their successors to provide the developer all necessary information to complete this annual report requirement. The report shall be distributed to Osceola County, the City of Kissimmee, the City of St. Cloud, the ECFRPC, FDCA, FDOT, FFWCC, SFWMD and all affected permit agencies. The report shall include any information specifically required to be included by the conditions of the development order as well as the information required by DCA rules and shall be presented in a format as depicted in the Development Summary Table provided by the ECFRPC. The report to the county shall also include a

1003 statement that all persons/agencies listed above have been sent copies of
1004 the annual report.

1005 Glossary of Acronyms Used

1006

ACOE	Army Corps of Engineers
ADA	Application for Development Approval
AM&M	Annual Monitoring & Modeling
BRT	Bus Rapid Transit
CCR	Codes, Covenants and Restrictions
CDD	Community Development District
CSDA	Critical Smoke Dispersal Area
DCA	Department of Community Affairs
ECFRPC	East Central Florida Regional Planning Council
ERP	Environmental Review Permit
FDEP	Florida Department of Environmental Protection
FDOT	Florida Department of Transportation
FFWCC	Florida Fish and Wildlife Conservation Commission
FGBC	Florida Green Building Coalition
FIHS	Florida Intrastate Highway System
LEED	Leadership in Energy and Environmental Design
LOS	Level of Service
M&M	Monitoring & Modeling
MMTD	Multimodal Transit District
NOPC	Notification of a Proposed Change
OCSB	Osceola County School Board
OHW	Ordinary High Water
SFWMD	South Florida Water Management District
TMDL	Total Maximum Daily Load
USFWS	US Fish and Wildlife Service

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On Following Page

Exhibit "C"

DRI Development Order

Tohoqua Development of Regional Impact Development Order

WHEREAS, Neptune Road Investments, LLC f/k/a Regional Development/192, LLC, a Florida Limited Liability Company, and Newland Communities, LLC, a Delaware Limited Liability Company, (“Master Developer”) filed an Application for Development Approval (“ADA”) for a Development of Regional Impact called Tohoqua relating to real property described in Exhibit A (the “Property”), attached hereto and by this reference made a part hereof, located within Osceola County, Florida; and

WHEREAS, the proposed development constitutes a Development of Regional Impact (a “DRI”) pursuant to the standards set forth in Chapter 380, Florida Statutes and the Florida Administrative Code; and

WHEREAS, the County Commission, as the governing body of Osceola County with jurisdiction over the Property pursuant to Chapter 380, Florida Statutes, is authorized and empowered to consider an ADA filed by the Master Developer; and

WHEREAS, on July 31, 2008, the County Planning Commission held a duly noticed public hearing on the ADA for the Property and recommended that the County Commission approve the ADA; and

WHEREAS, on August 18, 2008, the County Commission held a duly noticed public hearing to consider the ADA submitted by the Master Developer for the Tohoqua development and heard and considered the testimony taken at said hearing; and

WHEREAS, the County Commission has received and considered the Assessment Report and substantially included the recommendations of the East Central Florida Regional Planning Council (“ECFRPC”) within this Development Order; and.

WHEREAS, the Osceola County Board of County Commissioners is aware of the significance of the environmental resources of the subject site and those resources associated with Lake Tohopekaliga ("Lake Toho"), and supported the creation in 2005 of the Lake Toho Environmental Working Group, an interagency group which proposed a series of actions to be taken by the Master Developer and by regulatory agencies to protect the lake and its setting; and

WHEREAS, this Development Order substantially reflects the conditions proposed by the Lake Toho Environmental Working Group, which will also be reflected in subsequent development orders for DRIs along the east and south shores of Lake Toho;

WHEREAS, the Osceola County Board of County Commissioners has made FINDINGS OF FACT and CONCLUSIONS OF LAW with regard to the ADA.

NOW, THEREFORE, IT IS ORDERED AND RESOLVED by the Board of County Commissioners of Osceola County, Florida that the Tohoqua DRI Development Order (this "Development Order") for the Property is approved pursuant to Section 380.06, Florida Statutes, subject to the following terms and conditions included herein.

Findings of Fact and Conclusions of Law

The Tohoqua ADA has been reviewed by the East Central Florida Regional Planning Council, Osceola County Planning Commission and Osceola County Board of County Commissioners to consider whether, and the extent to which:

- a. The Tohoqua development will have a favorable or unfavorable impact on state or regional resources, infrastructure and/or facilities identified in the applicable state or regional plans.
- b. The Tohoqua development will significantly impact adjacent jurisdictions.

- c. The Tohoqua development will adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment pursuant to Section 380.06(12) (a), Florida Statutes.

Based on the review, regionally significant impacts resulting from the proposed development were identified and considered by each of the reviewing agencies. The conditions of approval contained in this Development Order provide a coordinated framework intended to address or mitigate specific regional impacts and support the following Conclusions of Law as required by Florida Statutes, 380.06(13 and 14).

Further, the Tohoqua development has been found to be

- i. consistent with the adopted Osceola Comprehensive Plan and Land Development Regulations;
- ii. substantially consistent with the report and recommendations of the East Central Florida Regional Planning Council; and
- iii. consistent with the State Comprehensive Plan. The Tohoqua development is not located within an Area of Critical State Concern.

General Conditions

- 1) Consistency with ADA. The Tohoqua development shall be developed in accordance with the information, data, plans and commitments contained in the ADA and supplemental information incorporated herein by reference, unless otherwise provided by the conditions of this Development Order. This Development Order shall govern the development of the Property and shall prevail over any conflicting information, data, plan, or commitments. As background for the documents referenced below, the ADA was submitted under the name of Mariner's Cove. Subsequent to the response to the First Sufficiency Review dated April 5, 2007 the Applicant renamed the Project to Tohoqua. For the purposes of this condition, the ADA shall consist of the following items:

- a. ADA dated November 17, 2006

- b. First Sufficiency Response received April 5, 2007
- c. Second Sufficiency Response received July 30, 2007
- d. Third Sufficiency Response received April 17, 2008
- e. A Master Plan, identified as Map H and attached hereto as Exhibit B, dated July 11, 2008.

2) The Approved Development Program.

- a. Project Description: A mixed-use development with 1,860 single-family detached units; 1,360 multi-family units; 150,000 square feet of retail and office; 30,000 square feet of institutional/civic uses; and, 300 hotel rooms together with the necessary amount of square feet of building area and site acreage necessary to accommodate public educational uses as required or requested by the School Board of Osceola County pursuant to a school siting plan described below. Institutional/civic uses include but are not limited to public libraries, police, fire and similar uses. Accessory dwelling units are permitted as a part of the mix of housing choices within the Tohoqua development, but will not be counted as part of the density calculation.
- b. Total Acreage: 1,185 gross acres ("Property")
- c. Legal Description: Attached as Exhibit "A"
- d. Master Plan: Map "H" attached as Exhibit "B"
- e. Project Buildout: Tohoqua DRI is to be developed as a two phase project as delineated in Condition No. 22.

3) Status of Development Order, Development Regulations. The Tohoqua development shall be governed by this DRI Development Order in developing the Property. County land development regulations, including but not limited to Planned Development ("PD") district regulations, shall supplement this Development Order; to the extent such regulations are consistent herewith. Nothing herein is intended to relieve the Master Developer or any subsequent Developer of any concurrency requirements as set forth in Florida Statutes, Florida Administrative Code or Osceola County ordinance.

- 4) *Subsequent Changes in Land Use*. The Master Developer may increase or decrease the amount of a particular land use within the approved development program by using a land use conversion table, which is based on equivalent peak hour directional trip ends, attached hereto as Exhibit "C". An increase and corresponding decrease in the total amount of each land use category may be permitted without a requirement for a Notice of Proposed Change (NOPC) subject to the following: the amount of the proposed increase does not exceed on a cumulative basis any substantial deviation criteria identified in Chapter 380.06(19)(b) 1-14, Florida Statutes; the proposed change does not require an amendment of the Development Order; the request for a land use conversion is included as part of a Planned Development (PD) or Planned Development Amendment (PDA) application submittal. The Florida Department of Community Affairs (the "DCA"), the ECFRPC, and the South Florida Water Management District (the "SFWMD") shall be provided notice of the land use conversion proposal at least 30 days in advance of the submittal of the PD or PDA application that includes the proposed conversion. The notice to be provided shall include a copy of this Development Order and shall state the land uses which will be increased or decreased and include an analysis by a certified engineer stating whether the contemplated changes in land uses will increase the demand for potable water. If the demand for potable water will be increased, the Developer shall provide a capacity availability letter from its water provider stating there is potable water capacity and allocation available under the water providers Consumptive Use Permit. Approvals of land use conversions, as well as amendments to the Development Order affecting the development program will be reported on an individual and cumulative basis as part of the Biennial Report. Any future NOPC shall incorporate all changes due to the use of the conversion table as well as approved amendments to the Development Order.
- a. The Master Developer may not decrease the acreage or square footage of any type of non-residential development below the Comprehensive Plan

criteria in effect at the time of the request to decrease acreage or square footage necessary to:

1. Sustain the number of Neighborhood and Community Centers identified on Map "H".
 - b. Use of the conversion matrix will be consistent with the provisions of the East Lake Toho Conceptual Master Plan (Mixed Use District #1 and #2) that address minimum levels of development/employment to be completed within the Development.
 - c. Upon its adoption by the Board of County Commissioners, it is contemplated that the East Lake Toho Conceptual Master Plan (ELTCMP) shall be substantially consistent with Map "H" attached to this the Development Order. It is anticipated that the ELTCMP may contain additional data that is beyond the level of detail provided through Map H, however nothing contained in the ELTCMP shall ameliorate or lessen the validity of any of the approvals or entitlements provided for herein.
- 5) Master Developer. As referenced herein, the Master Developer is the entity that has the authorization to carry out the responsibilities described in the terms and conditions of this Development Order as well as the statutes that govern Developments of Regional Impact. At the time of execution of this Development Order, the Master Developer is the applicant for the ADA/DRI for Tohoqua. Should the designation of the Master Developer change, the County shall be notified in writing of the change, and such notice shall be executed by a duly authorized representative of the new Master Developer and duly authorized representatives of all other developers within the Property. Failure to notify the County of a change in the designation of a Master Developer will result in suspension of the County's review and approval of any subsequent development applications until such time as the County has received and verified a designation of a new Master Developer. Additional responsibilities of the Master Developer are listed below:

- a. As parcels of the Tohoqua Property are sold or transferred, the Master Developer shall provide, in writing, to the new owner and the County an allocation of site acreage, land use (in dwelling units or square feet of use) and pm peak hour trips. These allocations will be used by the County in monitoring progress and phasing of the development.
- b. The Master Developer shall prepare and submit biennial reports for the life of the Development Order. In the event portions of the Property are sold to one or more other parties for development purposes, then the Master Developer shall retain the responsibility to ensure that the biennial report is duly submitted and addresses the entire Tohoqua DRI. The Master Developer shall include in all land contracts executed after the date of this Development Order, language requiring buyers and their successors to provide the Master Developer all necessary information to complete this biennial report requirement. The report shall be distributed to the County, the City of Kissimmee, the City of St. Cloud, ECFRPC, FDCA, FDOT, FFWCC, SFWMD and all other affected permit agencies. The report shall include any information specifically required to be included by the conditions of the Development Order as well as the information required by Florida Statutes and Department of Community Affairs rules, and shall be presented in a format as depicted in the Development Summary Table provided by the ECFRPC. The report to the County shall also include a statement that all persons and agencies listed above have been sent copies of the Biennial Report.
- c. The point of contact for interpretation and enforcement of this Development Order shall be the County Manager or designee.
- d. Where the term "Developer" is used in this Development Order, it refers to a legal entity that has secured a right to utilize Property within the Tohoqua DRI and may file development applications with the County, but has not necessarily assumed the responsibilities of the Master Developer as defined herein.

- 6) *Expiration.* This Development Order shall expire on December 31, 2028, unless the date is extended by NOPC or substantial deviation in a manner consistent with Chapter 380.06, Florida Statutes. If construction of five (5) percent of Phase 1 (as measured by external PM Peak Hour traffic) has not commenced within five years of the date of rendering this Development Order and satisfaction of the requirements of Conditions 26 and 41a of this Development Order have not been met, then the Development Order shall expire. However, government imposed moratoria directly affecting the ability of the Master Developer or a developer to proceed shall toll the five year Phase 1 time frame for the duration of the moratorium.
- 7) *Compliance with Federal and State Permits.* Nothing in this Development Order affects the Master Developer's or developer's requirement to comply with all State, Federal and local governmental permitting.

Archaeological Resources

- 8) *Notification and Reporting Requirements.* The Master Developer and/or developer shall notify, or ensure the notification of construction personnel, through posted advisories or other methods, of the potential for artifact discoveries on the Tohoqua DRI and to report suspected findings to the project manager. In the event of discovery of artifacts of historic or archaeological significance during project construction, the Master Developer and/or developer shall take the following actions: immediately halt any construction activity within 150 feet of the location of any discovery that has the potential to adversely affect the site; and will, within three business days of the discovery of artifacts notify the County and the Division of Historical Resources (DHR) of the Florida Department of State; coordinate the evaluation of the artifacts with review agencies and provide any professional assistance necessary to document, relocate, preserve or conserve the site and/or physical artifacts; provide proper protection of the discovery in accordance with applicable law; and provide a written report to the agencies

listed above documenting the results of the site evaluation and mitigation/preservation actions proposed or completed. The process and actions described above shall not extend beyond a period not to exceed 120 days to allow evaluation of the site.

Project Design

- 9) *Project Design Guidelines.* The Tohoqua DRI shall support and further the design characteristics outlined below:
- a. Neighborhoods shall form the basic building block for development, characterized by a mix of residential housing types distributed on a well-connected street system where the majority of housing is within a reasonable walking distance (defined as approximately ½ mile) of a Neighborhood Center.
 - b. The mix, density, and location of residential housing types within the Tohoqua DRI will be compatible with adjoining land uses, internal to the project. Higher density residential housing types that are planned within the Neighborhood and Community Centers should be developed in increments that maintain the street and block pattern of each center type. Specific compatibility standards that address the mix, density and location of residential housing will be included in the Planned Development zoning submittal. However, if the Land Development Code has been updated to include standards for Mixed Use Development Districts, then such standards will be applicable to the Tohoqua DRI, but such standards will remain consistent with Sections 1.3.11 through 1.3.15 of the Osceola County Future Land Use Element of the Comprehensive Plan (as adopted on December 10, 2007).
 - c. Neighborhood and other types of centers shall provide a public/civic focal point to neighborhoods through the use of such non-residential uses as appropriately scaled retail/office uses and parks and public institutional uses.

- d. Within the neighborhoods different housing types shall be provided to support a range of family sizes and incomes.
- e. The street pattern shall be a network of interconnected streets that supports the needs of all users, including pedestrians, bicyclists and motor vehicles, offers multiple routes to a destination, and encourages a reduction in reliance on arterial roadways.
- f. The primary priority of the street system shall be creation of a comfortable and attractive pedestrian environment that emphasizes accessibility; vehicle mobility is secondary.
- g. A pedestrian environment shall be formed through provision of sidewalks, street trees and on-street parking capable of providing a distinct separation between pedestrians and traffic; an inviting public space is created by streets, sidewalks and buildings, which are arranged in such a way that they are unbroken by surface parking lots; an attractive setting is created with adequate but low impact lighting and signage which has a pedestrian orientation.
- h. Neighborhoods and other types of centers shall be designed with pedestrian scale blocks having dimensions capable of accommodating different types of uses to enable over time the site to evolve to other uses.
- i. The project design guidelines referenced above shall be incorporated within a Planned Development (PD) Zoning Map Amendment encompassing the entire Property.
- j. Each Neighborhood or Community Center identified on Map "H" and within the PD for the entire property shall be subject to the following requirements:
 - i. The Master Developer or a Developer if applicable shall organize, support and complete a collaborative site planning and design workshop (also known as a design charette) that includes Osceola County staff. The purpose of the workshop is to develop a conceptual

framework for each center that allows all uses permitted by the applicable zoning category, inclusive of Planned Developments, to be considered in the planning and design of the center.

- ii. A Master Plan shall be prepared that identifies the relationship between streets, blocks, lots, buildings, civic spaces, off-street parking and uses, to form a pedestrian oriented center. As part of the plan's background information, a market analysis shall be performed demonstrating the economic viability of the proposed uses.
- iii. The center Master Plan shall be approved by the County pursuant to the requirements of the Land Development Code in effect at the time of submittal of the PD or PD amendment that includes the Master Plan.
- iv. To assure that a sufficient amount of non-residential land use providing neighborhood services, convenience shopping, employment and personal services, is in place concurrent with the needs generated by residential development, two actions will be required to be completed. The first action for the Master Developer to plan, permit and construct a portion of infrastructure within the primary center that is necessary to support the development of a total of 60,000 square feet of floor area of non-residential (excluding institutional) uses. This action shall be initiated with the approval of the final development order that results in a cumulative total of 1,000 dwelling units within the Property, and shall be completed before the issuance of a certificate of occupancy for the 1,700th dwelling unit. The second action will be to construct and obtain a certificate of occupancy for either; a minimum of 25,000 square feet of retail and/or other non-residential uses (excluding institutional uses); or, to construct and obtain a certificate of occupancy for a portion of the center as determined or required by the Mixed Use Code or the Center Master Plan that results from the required charette prior to the issuance of the first building permit for development within Phase 2. The construction of retail or other non-residential uses may

be completed by the Master Developer, any other Developer and/or third party end user of the structure or structures that are constructed.

Natural Systems and Resources

10) Habitat Conservation and Management. Except as otherwise allowable by this Development Order or by permits obtained by the Master Developer from any one or more of the South Florida Water Management District ("SFWMD"), the Florida Department of Environmental Protection ("FDEP"), the Florida Fish and Wildlife Conservation Commission ("FFWCC"), the U.S. Army Corps of Engineers ("ACOE"), the U.S. Fish and Wildlife Service ("FWS") or the U.S. Environmental Protection Agency ("USEPA"), site development activities on the Property shall not result in the harming, pursuit or harassment of wildlife species classified as endangered, threatened, or a species of special concern by the State or Federal governments in contravention of applicable State or Federal laws. Should such species be at any time determined to be roosting or residing on, or otherwise significantly dependant upon the Property, the Master Developer, or Developer, as appropriate shall take all steps required by either State or Federal law, and the regulations and rules implementing the same, to conduct all necessary evaluations as to the impacts proposed as to any listed species and to provide appropriate protection to the species identified in conformity with and to the satisfaction of all agencies of either the State or Federal government having jurisdiction over the same. Further, the Master Developer or Developer, as appropriate, shall obtain such permits and licenses as are required under the State and/or Federal law to ensure that the development program contemplated by this Development Order is in full compliance with all applicable laws and regulations or rules implementing the same.

11) Conservation and Preservation. The conservation and preservation of existing regionally and locally significant natural resources shall be accomplished through the ongoing process described in the following

paragraphs.

- a. Habitat conservation and preservation activities shall be guided by a Habitat Conservation and Management Plan (HCMP) that: is prepared by the Master Developer and submitted to the County together with the “reviewing agencies”, namely the SFWMD, ECFRPC, ACOE, USFWS and FFWC for review and comment. The County will provide a 30 day review and comment period for reviewing agencies and the failure of the reviewing agencies or any one of them to comment within the thirty (30) day period shall terminate their right to further review and comment on the HCMP. To the extent any one or more of the reviewing agencies have a right independent of the HCMP, to review and comment on any other ecological permit required to be obtained by the Master Developer, that agency’s review of the required permit application will be conducted pursuant to applicable law, rules and regulations governing the same. The County will complete the entire review process of the HCMP, including the review by the reviewing agencies, within 45 days of submittal of the draft HCMP by the Master Developer. The scope of the County review is to determine if the HCMP is consistent with the provisions of this Development Order and applicable County ordinances. Comments received from other reviewing agencies, if any, will be incorporated as informational items in the compliance letter issued by the County and will not constitute a basis for a determination of non-compliance. The HCMP will be submitted as part of any initial ERP application to the SFWMD/FFWCC. In the event County fails to respond within forty-five (45) days of receipt of the HCMP, Master Developer will notify the County by letter of its’ failure to respond. The letter will be delivered to the County Manager, with copies to the Growth Management Administrator and the County Attorney. The failure to issue a compliance letter within the fifteen day period shall be construed to be a finding that the HCMP is in compliance with the adopted Development Order and applicable regulations.

- b. The Master Developer submitted the required HCMP on June 4, 2007 and it has been reviewed as part of the ADA/DRI review and approval process. This HCMP, as may be updated and amended, shall be submitted to the County for the compliance review no later than the submittal of the Planned Development Zoning Map Amendment application.
 - c. The County shall, by September 30, 2008, prepare and adopt standards and criteria applicable to the preparation, compliance review, approval and ongoing implementation/enforcement of Habitat and Conservation Management Plans ("Osceola County HCMP Standards"). The Osceola County HCMP Standards shall be adopted as part of the Land Development Regulations via all normal public hearings before the Planning Commission and Board of County Commissioners. The adopted Osceola County HCMP Standards shall be utilized to update the 2007 Tohoqua HCMP previously reviewed as a part of the ADA/DRI review, but only to the extent the Osceola County HCMP Standards do not conflict with the 2007 HCMP submitted by the Master Developer, as may be amended as provided herein. The standards and criteria adopted by the County shall incorporate, where appropriate, the following directives and guidelines:
 - i. The County's review and approval of an HCMP shall, at a minimum, address the appropriate application of land management practices, planned habitat enhancement activities, and development/construction related coordination concerning permitting and monitoring activities.
 - ii. The County shall not require any wildlife habitat or resource mitigation measures other than required by any applicable state and federal statutes, rules and regulations; any condition of this Development Order; and ordinances concerning wildlife habitat and resource protection adopted by the Board of County Commissioners.
- 12) The Components of the HCMP. The Habitat Conservation and Management Plan (HCMP) shall include at a minimum, the components listed below. A

specific component may be deleted from the initial HCMP when it has been determined the applicable species is not present within the Property. The HCMP submitted with the ADA contains information as to wildlife species or resource protection concerning the Project site. Consistent with the review criteria previously set forth, the County will provide a written determination allowing a requested deletion of a component upon the review of the analysis in the HCMP that the species or resource is not present within the site. The analysis has been provided by a qualified wildlife biologist experienced with the species or resource for which the request is made. The individual species or resource components may be modified during the course of project development as Environmental Resource Permit assessments and permits are issued by the SFWMD or Section 404 Permits are issued by the U.S. Army Corps of Engineers ("ACOE"). As such permits are issued, the HCMP shall be deemed modified and amended to conform to the terms and conditions obtained in such permits. To the extent any conditions set forth in the HCMP are in conflict with the permits, the terms and conditions of the permits shall control. The assessments to be performed and species to be reviewed in the preparation of the HCMP are as follows:

- Sandhill Crane Habitat;
- Bald Eagle Habitat;
- Snail Kite Habitat;
- Gopher Tortoise and Commensal Species Habitat;
- Crested Caracaras Habitat;
- Sherman's Fox Squirrel Habitat;
- Whooping Crane Habitat;
- Wood Stork Habitat;

- a. Each component of the HCMP shall be prepared to address the elements listed below. Elements (i) through (iv) may be brought forward from the ADA and included with the HCMP, if applicable.
 - i. The general and site characteristics of the species and associated habitat areas, if applicable (population, foraging, nesting, etc.);
 - ii. The species population, physical location, and extent of habitat associated with the species;
 - iii. Success criteria for wildlife management and monitoring strategies to evaluate progress toward the criteria;
 - iv. An evaluation of the on-site habitat and ability/capacity to support its intended function and/or the known or estimated species population;
 - v. Habitat preservation and enhancement activities including, but not limited to; development buffers; removal of Category 1 exotic nuisance species; maintenance of groundwater levels and water quality; introduction/replanting of trees and other vegetation that aid in habitat restoration and capacity enhancements; and, appropriate and inappropriate habitat management activities.
 - vi. Habitat restoration practices and requirements prior to and following invasive construction related activities associated with the location and/or operation of utilities, roads and storm water facilities;
 - vii. Permitted land uses and human activities, including public access, within delineated habitat management areas; and
 - viii. Linkages between identified species to the extent of shared habitat and movement corridors. The HCMP shall include an exhibit identifying the location of existing and new linkages within the Property, consistent with Map H and other information and exhibits associated with the ADA and subsequent sufficiency data, needed for the movement of multiple species of wildlife, as well as the on-site linkages needed to connect to regional habitat systems. The initial Planned Development zoning

submittal shall address and include a provision for constructing and funding the necessary eco-passages and road crossings as identified in the HCMP.

- ix. The eco-passages and road crossings must be planned to facilitate the movement of wildlife from this development to other off-site developments and parcels. Identification of the implementation of the measures prescribed for wildlife corridor crossings shall be incorporated in the HCMP and presented in the Biennial Monitoring Report. The plan will also require that all roadway crossings and eco-passages be planned in a manner which provides for;
 1. The movement of wildlife during high water events.
 2. Minimization of adjacent residential lots;
 3. Wet or dry culverts;
 4. Reduced speed limits;
 5. Signage to warn motorists of the presence of wildlife;
 6. Reduced street lighting adjacent to crossing locations;
 7. Lighting in close proximity to crossings and eco-passages to be directed away from the corridors and eco-passages so as to minimize, to the maximum extent practical, the impact to wildlife within.
 8. Fencing to direct wildlife to designed crossings;
 9. Landscaped buffers between intensive land uses and corridor crossings; and
 10. Use of native landscaping at corridor crossings to screen wildlife from lighting and traffic.
- b. Component(s) of the HCMP shall, if applicable, address the following specific requirements for each species referenced herein and residing or nesting on the Property:

- i. The *Sandhill Crane Component* shall identify measures, such as vegetation management, to maintain sufficient nesting and foraging habitat to support any existing sandhill cranes (*Grus canadensis*) as herbaceous systems, preventing encroachment of shrubby or woody vegetation, and shall include a vegetation management plan for the upland buffers adjacent to sandhill crane foraging or habitat areas to assure that they are maintained as suitable foraging habitat for sandhill cranes, and
- ii. The *Bald Eagle (Haliaeetus leucocephalus) Component* shall include an exhibit identifying the location of designated “no development zones” within at least a 660-foot radius around trees with active eagle nests, unless otherwise authorized under existing Federal and State regulatory protocols. Identification of eagle nest trees shall be performed by a wildlife biologist with expert knowledge concerning bald eagles and their nesting habits. In addition, an eagle management plan, prepared with the assistance of a wildlife biologist with expert knowledge of bald eagles nesting habits, will be submitted to and approved by the appropriate state and/or federal regulatory agencies, as required by law, prior to the submittal of the Habitat Conservation and Management Plan. The HCMP must accomplish the following:
 1. The identification of bald eagle habitat areas must demonstrate a prioritization for the retention of stands of mature (greater than 12”dbh) pine and cypress trees on site to the maximum extent practicable and in accordance with applicable law as determined by Osceola County.
 2. The plan shall identify and include success criteria for bald eagle management and those monitoring strategies that are necessary to evaluate progress toward those achieving the success criteria.

3. The plan shall include Bald Eagle Guidelines that are currently being developed by the Florida Fish & Wildlife Conservation Commission (FFWCC), when they are adopted.
 4. The plan shall include a program for restoring longleaf pines for future bald eagle nests. The plan shall require: plantings in the two designated areas as identified in the draft HCMP dated June 7, 2007, as well as in upland buffers, parks and open spaces; and tree plantings of various sizes and ages within each phase of development sufficient to produce a broad distribution of ages of pines. The plan shall address the manner in which the Master Developer will ensure the plantings survive and are maintained; and will prescribe the manner in which they will be restored when lost to fire, blight, or other destructive agents. A provision to be included is to verify that trees proposed for protection are plainly marked or fenced with construction fencing prior to commencement of tree cutting.
 5. During the CDP (Comprehensive Development Plan) or EIP (Engineering Improvement Plan) review and approval process, control elevations of proposed stormwater ponds must be reviewed to assure that mature pine and cypress tree will not be adversely affected.
 6. The plan shall include specifications consistent with the requirements of the Land Development Code for contractors to enable them to minimize loss of trees due to construction disturbance, including a provision to verify that trees proposed for protection are plainly marked or fenced with construction fencing prior to commencement of tree cutting.
- iii. The *Snail Kite Component* shall be prepared utilizing the United States Fish and Wildlife Service (USFWS) Draft Snail Kite Management Guideline document (Feb. 2006) and/or its successor document.

Alternatively, the utilization of different management criteria and standards may be utilized if the alternative standards are approved, in writing, by the USFWS. In addition, this Component will address waterborne activities that have the potential to disturb snail kite nesting habitat. The Master Covenants, Conditions and Restrictions for the project shall include provisions that restrict or prohibit waterborne activities that could impact Snail Kite habitat, including without limitation a prohibition against jet skis and airboats from being docked or launched from the Property.

- iv. The *Gopher Tortoise* (*Gopherus polyphemus*) and *Commensal Species Component* will be included as an element of the HCMP unless on-site conservation is not recommended by the FFWCC, or not permissible due to FFWCC rule changes. On-site gopher tortoise conservation areas shall be located in no more than three preserves within the Tohoqua DRI. A summary of the status of permitting and the description of the permitted preserve area(s) shall be included with the Biennial DRI and Habitat Management reports.
- c. A composite exhibit will be prepared and included with the HCMP that identifies all areas within the Tohoqua DRI that will be encumbered by conservation easements that will protect and preserve the natural resources within the Tohoqua DRI. Conservation easements will be conveyed to the County and, ~~if~~ applicable, other co-grantee entities, with the capacity and capability of conserving the lands and resources contained within a prospective easement. The conservation easements referenced above shall include a requirement that the Grantee(s) provide for an educational plan identifying the manner in which future residents of the Tohoqua DRI will be informed about the restrictions associated with the habitat management and conservation areas. Information about the HCMP shall be recorded as part of the chain of title for each parcel within Tohoqua DRI.

- d. The update of the 2007 HCMP shall also contain a plan for funding all aspects of the HCMP, including but not limited to, the long term maintenance required for all habitat management areas, habitat restoration, and construction of eco-passages. The plan will provide for the long-term availability of management funds which will not be subject to homeowner or property owner referenda. ~~It is intended that a Community Development District (CDD) will be identified as the successor to the Master Developer for long-term funding and implementation of the HCMP.~~
- i. A Master Property Owners Association or other similar entity (a Community Development District for example) will be identified as the successor to the Master Developer for long-term funding and implementation of the HCMP. The Master Developer and/or the Master Property Owners Association shall include restrictions within the Covenants, Conditions and Restriction to restrict free-ranging pets with the goal of preventing damage to wildlife and habitats that may result from free-ranging pets.
- 13) The Monitoring of the HCMP. In order to support the County's ongoing monitoring and enforcement responsibilities related to the implementation of the HCMP, the Master Developer shall provide a biennial report to the County which evaluates the performance of the HCMP (the Biennial HCMP Performance Report) and the results achieved through the date of the report. The County shall retain an Environmental Professional to review and evaluate the Biennial Performance Report and conduct such independent evaluations as the Environmental Professional deems appropriate. County Staff will provide comments, findings and recommendations as a result of the review of the Biennial Performance Report. The Master Developer and the County shall, within 30 days of the date of the County Staff comments, findings and recommendations, identify specific actions to be taken within the next biennial period to address or mitigate the County's findings and recommendations. The Master Developer shall be responsible for the County's reasonable costs to employ an Environmental Professional to

assist with the review of the Biennial Performance Report. Said responsibility will be satisfied either through direct payment to the County within 30 days of receipt of written notice, or through Report Review application fees adopted by the County.

- a. As a result of the issuance of staff comments or findings regarding the Biennial Performance Report, the Master Developer disputes such comments or findings, the County shall retain an Environmental Professional which is mutually agreeable to County and Master Developer (the "Environmental Mediation Professional") to review and evaluate the disputed comments and/or findings and conduct such independent evaluations as the Environmental Mediation Professional (EMP) deems appropriate. The EMP shall issue a report to the County and the Master Developer specifying that he/she either concurs with the staff comments and/or findings or identifying any disagreements with the findings contained in the report and recommending any additional management activities that should be undertaken by Master Developer necessary to achieve the goals of the HCMP. The findings and recommendations of the EMP are final. Master Developer shall be responsible for paying all costs associated with the EMP evaluation. Said responsibility will be satisfied either through direct payment to the County within 30 days of receipt of written notice, or through Report Review application fees adopted by the County.
- b. Contemporaneously with the approval of the Habitat Conservation and Management Plan, the developer may proceed with other submittals in accord with the following:
 - i. An Environmental Resource Permit application shall accompany each application for a final development order (FDO) approval. It shall be the responsibility of the developer applying for FDO approval to: demonstrate compliance with the approved HCMP; update the species survey and habitat information for any adjoining and/or

affected habitat management area identified in the HCMP; and provide specific and measurable methods for implementing the HCMP through the FDO and development process.

- ii. Each ERP application to a state or federal environmental agency shall contain a copy of the adopted DRI Development Order as well as the approved HCMP.
 - iii. The applicant for a final development order, if different than the Master Developer, shall provide a copy of the ERP application to the Master Developer and shall provide an opportunity for the Master Developer to provide any comments to the applicant prior to submittal of the application.
 - iv. Any modifications to the HCMP that are approved via the ERP/FDO application review and approval process shall be incorporated into the biennial DRI report, and all subsequent biennial DRI reports. All revised HCMP and copies of the corresponding permits necessitating any revisions shall be provided to the County within sixty (60) days of the issuance of said permit(s).
- 14) Use of Fertilizers. The Master Developer shall address the manner in which development of residential and commercial property within the Tohoqua DRI will be restricted relative to the use of fertilizer. The program developed by the Master Developer shall be consistent with the Florida Yards and Neighborhoods Program as well as the Model Landscaping Ordinance developed by FDEP and will draw on the protocols of both in developing and administering the manner in which fertilizer is used in the Tohoqua development. The program shall be referenced as part of the first Planned Development application, and its' provisions included, where appropriate, in the CDD, Homeowner's or Master Property Owner's Association Covenants, Conditions and Restrictions.

15) Wetlands.

- a. The Master Developer shall provide for at least a 50 foot average, 25 foot minimum upland buffer for wetlands of regional significance. Subject only to the permitting and final jurisdictional determinations by both the SFWMD and ACOE, the wetlands of regional significance to which this buffer requirement applies are depicted on Map "H". To the extent the processing and obtaining of the permits identified here results in a change in the jurisdictional boundary of the wetlands on site; such change shall be shown on Map "H" and afforded the same buffers.
- b. The Master Developer shall complete a binding wetland jurisdictional determination with both the ACOE and SFWMD or, alternatively, conclude wetland delineations as a part of Conceptual ERP or ACOE permit review. The ACOE jurisdictional determination may be pursued separately from the Conceptual ERP. The final determinations and the boundaries of the habitat and conservation management areas identified in the approved HCMP shall be updated with the wetland determinations from the ERP and ACOE construction permits.
- c. The stormwater management system must be designed to support, and not adversely impact, any wetlands intended for preservation, provide maximum connectivity, and maintain or improve wetland hydro-periods.
- d. Wetlands identified for preservation, along with the associated upland buffer, shall be placed under conservation easement dedicated to Osceola County and/or the SFWMD. Jurisdictional wetlands shall not be included in any platted lot or tract intended for development; however, associated upland buffers may be included. In that event, such tract or lot will be subject to Covenants, Conditions and Restrictions controlling the use and access of the same consistent with the permits and conservation easement regulating the resource.

- e. If Sovereign Submerged Lands (SSL) is determined to occur during the ERP process such that the development program authorized by this Development Order cannot be implemented, then the Master Developer will process an NOPC to address the redesign and/or reduction of the development program so as to reduce and/or eliminate impacts to SSL.
- f. The Project includes approximately seventy-two (72) acres of wetlands of regional significance as determined by the Master Developer. A majority of these wetlands, encompassing approximately sixty-two (62) acres, will be preserved on the Property in the area or areas shown as Preserved Wetlands on Map "H". The balance of the 72 acres of wetlands, approximately ten (10) acres, will be filled pursuant to permits to be obtained from the SFWMD and the ACOE. No filling or other alteration of the wetlands shall occur until all required permits have been obtained.
- g. Permits authorizing the filling of wetlands will be applied for. Any modification of wetland impacts as identified by information provided with the ADA Third Sufficiency, including allowance or relocation of impacts by either the SFWMD or the ACOE shall be subject to a Notice of Proposed Change (NOPC) pursuant to paragraph 380.06 (19)(d), Florida Statutes, and shall be presumed not to be a substantial deviation unless rebutted by clear and convincing evidence at a public hearing initiated and held by Osceola County. The Master Developer will comply with each and all of the terms and conditions of the wetland fill permits obtained as aforesaid, including the requirements for mitigating the unavoidable losses to the wetlands and will certify compliance with the same in the first and all subsequent Biennial Reports as hereinafter set forth. All reports submitted to either the SFWMD or to the ACOE pursuant to the terms and conditions of the permits obtained from one or the other or both of them shall be copied to Osceola County for informational purposes only.

- h. The Master Developer will coordinate with the adjacent landowner and the County in determining the alignment of any roadways that extend offsite so as to minimize the impacts to offsite wetlands.
- 16) The Lake Toho Protection Area. The Master Developer shall designate a Lake Toho Protection Area ("LTPA") that includes a 250 foot minimum, 500-foot average buffer along the Lake Toho lakeshore, measured from the controlled high water line elevation of 55.0 feet, NGVD. In administering these provisions the elevations referenced herein shall refer to existing elevations lakeward of the existing berm identified in aerial photography maintained by the County. The 55.0 foot elevation will be identified using the best available source for one-foot topographic contour information, and the LTPA will be delineated on a project map. The LTPA will be delineated on the HCMP exhibit referenced above at (11) (c). A map illustrating a typical LTPA cross-section will also be included in the HCMP. Fee simple ownership of land within the LTPA will be: retained by a Master Property Owner Association or, at the election of the Master Developer, a Chapter 190, Florida Statutes, Community Development District; or dedicated to the County or a designated non-profit land trust for the purpose of preserving public access and protecting habitat and wetlands. In the case that fee simple ownership remains with the Master Property Owner Association or Community Development District, a conservation easement shall be dedicated to the County. The fee or easement dedication shall be completed no later than one (1) year following the creation of a long term ownership entity and Covenants, Conditions and Restrictions for the Development. Any conservation easement associated with the LTPA must specify that below elevation 56.5, native vegetation will be managed to mimic historic conditions, including the removal of Category 1 exotic plants. Also, the Master Developer shall relocate any lake access point under its control within the Tohoqua DRI to avoid snail kite nesting habitat. Within the LTPA, impervious surfaces shall not exceed 5% of the total surface area and no structures shall be allowed except the following:

- a. Public open spaces, passive recreation facilities, such as but not limited to; paved or unpaved bicycle/pedestrian trails, boardwalks, and shelter houses provided these facilities do not jeopardize or impair essential behavior such as breeding, feeding or sheltering of listed species addressed in the HCMP.
 - b. Waterside fueling or fuel storage tanks shall not be allowed within the LTPA.
 - c. Within the LTPA, the Master Developer shall provide non-vehicular public access for fishing, and passive use of public area around Lake Toho.
 - d. No water fences will be allowed within the LTPA and any existing water fences shall be removed.
 - e. To reduce the potential for impact to offsite snail kite nesting areas, boat ramps, lifts or other forms of connection that would provide for boat access directly to Lake Toho or through the C-31 canal shall be prohibited within the Property.
- 17) C-31 Canal Crossing.** The lowest support member of any C-31 canal crossing shall be at a minimum elevation of 66.5 ft. (NGVD 29) for a width of 40 feet centered over the deepest part of the navigable canal.
- 18) Smoke Management.** Recognizing that Tohoqua is not within or near a controlled burn area, but understanding that controlled burning will continue to be a vital tool in agricultural and conservation land management, the Master Developer agrees that if and when any portion of the Tohoqua DRI is incorporated into a controlled burn smoke impact area, contracts for the sale of lands in areas affected by smoke shall specify the following:
- a. Smoke from prescribed fire is anticipated to occur, and
 - b. The developer must keep incompatible uses (schools, roads, hospitals, nursing homes, etc.) out of controlled burn smoke impact areas; if unavoidable, sensitive land uses will be clustered rather than spread

across the controlled burn impact areas, to reduce management problems associated with these uses.

- c. The buyer or purchaser waives his/her right to challenge, object, sue, or otherwise interfere with the conduct or results of a prescribed burn as may relate to smoke, provided the burn is managed consistently with best management practices.
- d. Institute the protocol for informing individuals that purchase property, or live and work within smoke sensitive planning zones that they will be exposed to smoke, and
- e. Institute measures to educate the public about the use of fire; and their role in the fire management program including consideration of road placement and design, signage, “firewise” landscaping, natural buffer and open space management and emergency access points.
- f. In implementing sub-paragraphs b) and c) above, the Master Developer shall cooperate with the County Fire Department and shall provide a summary of these efforts in the Biennial Report.

19) Water Quantity and Quality.

- a. The Master Developer shall coordinate with SFWMD and FDEP in securing an Environmental Resource Permit (ERP) with consideration of impending rule changes for the Lake Okeechobee and Estuary Watershed Basin.
- b. The Master Developer shall address pesticide and nutrient control consistent with Condition ~~13~~ 14 above. Additionally, the Master Developer and all other Developers doing work within Tohoqua will apply the techniques described in the manual titled “Florida Green Industries: Best Management Practices for Protection of Water Resources in Florida” in the application of fertilizers, pesticides and herbicides at Tohoqua and the protocols of the same will be references in and made a part of the HCMP.

- c. The Master Developer or a legal operating entity established in accordance with the SFWMD Basis of Review criteria to monitor and maintain stormwater management lakes, ditches, wetlands and preserved uplands shall establish baseline conditions and monitor water quality until five years after completion of the project, as directed by SFWMD or FDEP. The baseline conditions analysis and water quality monitoring data shall be included in the first Biennial DRI Report.
- d. Existing stormwater management requirements for treatment and attenuation volumes shall be increased by thirty (30) percent until such time as the SFWMD stormwater management requirements for the Okeechobee basin and the TMDL standards for Lake Toho have been updated. The County will advise the Master Developer in writing when those regulations have been updated pursuant to the purpose of this condition.
- e. As part of each EIP for the project, the Master Developer or a Developer developing within Tohoqua must quantify and assess the impact of the volumetric portion of post-development stormwater runoff to Lake Toho. Additional volumetric restrictions on post-development stormwater runoff may be required based on the assessment provided. However, any conceptual and/or Construction Permit issued by the SFWMD for the Tohoqua DRI, which by its terms provides for and approves a design and management of the stormwater management system for the Tohoqua DRI, such permit(s) shall be controlling and said permit(s) shall satisfy the ~~analysis contemplated above~~conditions of Sections 19d and 19e for the processing of any additional EIPs for the project.
- f. The Master Developer or other Developers developing within Tohoqua will not undertake any direct action through permitting or construction of infrastructure to utilize the surface water of Lake Toho as a source

for landscape irrigation water. The Master Developer and developers will work toward locating and designing stormwater detention facilities that can serve as water resources for landscape irrigation.

- g. The Master Developer and all other Developers doing work within Tohoqua will employ best management practices for erosion and turbidity control and these practices must be detailed on the construction plans that are subject to review by Osceola County and will work toward locating and designing stormwater detention facilities that can serve as water resources for landscape irrigation.
- h. The provisions of Florida Water Star™ certification program as administered by the SJRWMD and published in Rev 11-October 2007, shall be applicable to this Development.
- i. The pre-development stormwater flow from existing out parcels that are surrounded by the Tohoqua development and currently drain into and through portions of the DRI property shall be incorporated within the stormwater plan for the Development.

20) Landscaping; Green Design.

- a. Native, drought tolerant, low maintenance vegetation shall be utilized in site development to minimize dependence on grounds irrigation and to promote retention of wildlife habitat.
- b. The Master Developer and developers shall implement water conserving, green design principles for landscapes and buildings to include xeriscaping and water re-use; and consideration of rain gardens, green roofs, cisterns, pervious pavement, etc.
- c. In no case shall potable or individual private well be used to irrigate public or private turf or landscape areas.
- d. The Master Developer and developers must consider the use of “Conservation Subdivision” design, shrinking individual lot sizes and lawn areas and the use of smaller lots adjacent to common preserved

open spaces unless Osceola County minimum density requirements render this impractical.

- e. The developer shall employ all feasible water conservation measures to minimize the potable and non-potable water requirements of the Tohoqua DRI. A ~~Waterwise~~-landscaping approach shall be used throughout the development that includes at least 75% of the landscaped vegetation being planted in drought-tolerant or native vegetation varieties. The use of St. Augustine grass should be minimized wherever possible. The developer shall conform with the requirements of the potable water provider related to water conservation measures; or shall prepare a water conservation plan that conforms to the guidelines of the South Florida Water Management District (Consumptive Use Permit Applicant's Handbook) and shall provide it to the SFWMD for review and comment concurrent with the initial PD zoning map amendment.
- f. Water saving devices shall be installed throughout the Development in conformance with either the water utility requirements or the approved water conservation plan referenced in (e) above.
- g. Developers shall construct and maintain a dual water distribution system to distribute both potable water and lower quality water, such as reclaimed water, to each water user within the Tohoqua Development.
- h. The Master Developer or Developer, as appropriate, will install in all publicly irrigated areas and commercial areas of the development "moisture" sensors" and/or "rain sensors" to aid in the management of irrigation water and conservation of the same.
- i. The Master Developer will include in the Covenants, Conditions and Restrictions to be imposed on all residential development within the Project where an irrigation system is installed by the homeowner, the requirement that "smart controllers" be installed and utilized to time irrigation and further the conservation of water.

21) Conservation Design. The Master Developer will incorporate the following conservation design elements in the design and development of Tohoqua, to-wit:

- a. All clubhouses and community centers built by the Master Developer or any other Developer building within Tohoqua shall be built to USGBC LEED NC or Florida Green Building Coalition standards and certified, or certified through another acceptable conservation design program approved by the County.
- b. Construction standards for residential homes should meet the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design LEED program, the Florida Green Building Coalition, the Green Building Initiative's Green Globes program, or any other nationally-recognized, green building system that is approved by the Florida Department of Management Services and Osceola County.
- c. "Dark Skies" measures to reduce light pollution shall be implemented to the extent that such measures are not inconsistent with the Osceola County Land Development Code.
- d. Elements of Low Impact Development (LID) appropriate to the development of Tohoqua will be reviewed and considered by the Master Developer and where appropriate taking into account costs, existing technology and suitability for Tohoqua such protocols will be utilized. For this purpose, LID standards are those found in publications of the United States Environmental Protection Agency and include, but are not limited to, the use of green roofs in commercial construction, the use of cisterns, the use of "rain gardens", pervious pavement and the like. Further elements of Conservation Design are set forth below in ~~the Sections dealing with "Energy"~~[Condition 42](#).

Transportation

22) Vehicular Traffic Phases. The Tohoqua DRI shall be divided into the following vehicular traffic phases based on reaching any of the following thresholds or

years, as indicated below. The difference in years between the original and current phase year will be included with other future extensions for the purpose of determining whether this project will be presumed to be a substantial deviation review pursuant to Paragraph 380.06 (19), Florida Statutes.

Phase (Year of Com- pletion)	Phase Year Original	Daily Trips	Daily Trips Cumulative	External Daily Trips	External Daily Trips Cumulative	Peak Hour Trips	Peak Hour Trips Cumulative	External Peak Hour Trips	External Peak Hour Trips Cumulative
Phase 1 (2015)	(2011)	18,396	18,396	16,174	16,174	1,921	1,921	1,711	1,711
Phase 2 (2020)	(2016)	14,510	32,906	13,309	29,246	1,696	3,617	1,546	3,257

23) Monitoring and Modeling Program. Prior to the initiation of Phase 2 beginning as identified in the preceding paragraph, the Master Developer shall conduct a monitoring and modeling program (the Phase 2 M&M Study). This program shall ascertain the Level of Service (LOS) on facilities where the Tohoqua DRI is estimated to contribute an amount of traffic greater than or equal to 5 percent of the adopted LOS service volume. The methodology of the monitoring and modeling program shall be agreed upon by the County and the Master Developer with appropriate input from the ECFRPC, the City of Kissimmee, the City of St. Cloud, FDOT, the Orlando Orange County Expressway Authority, Florida's Turnpike, LYNX and the DCA. The scope of monitoring and modeling effort shall be similar to that required to support the ADA but shall be consistent with the requirements of the Osceola County Concurrency Management Systems as it relates to facilities within that jurisdiction. All studies and monitoring and modeling programs shall be consistent with the ECFRPC's methodology. Empirical data shall be collected for the monitoring and modeling program on facilities where it is estimated that the Development contributes an amount of traffic greater than or equal to five percent (5%) of

the adopted LOS maximum service volume. This shall include an origin-destination survey to verify trip distribution on the external roadway network no earlier than 75% of Phase 1 and prior to commencement of Phase 2. A trip length study shall also be conducted to verify model results. In the event that all parties cannot come to agreement on the methodology, the ECFRPC, FDOT and the County shall be the final arbiters. The County's decision shall be final as it relates to the County facilities, the FDOT's decision shall be final on state facilities and the ECFRPC's decision shall be final as it relates to all other facilities. ~~This requirement shall be repeated prior to the completion of Phase 2 as well as any subsequent phases that may be established.~~

24) Facilities to be Monitored and Modeled. The facilities to be monitored/modeled for the ~~next~~second phase shall include, but shall not be limited to, those segments of the regional roadways within this list and one segment beyond where the Tohoqua DRI is estimated to contribute a cumulative amount of traffic greater than or equal to five percent (5%) of the adopted LOS service volume. The analyzed facilities will include signalized intersections and link analyses of collector and higher classified roadways and interchange ramps. Osceola County, the East Central Florida Regional Planning Council (ECFRPC), the City of Kissimmee, the City of St. Cloud, FDOT, the Orlando Orange County Expressway Authority, Florida's Turnpike, LYNX, and DCA shall each have the right to make reasonable requests for additional information from the Master Developer to verify adherence to these provisions. The Master Developer shall supply adequate information toward compliance with these requirements.

Candidate Roadways* for Monitoring and Modeling Study

Boggy Creek Road	Simpson to Buenaventura Blvd.
Brown Chapel Road	Lakeshore Blvd to 5th St.
Canoe Creek Road	US 192 to Project internal roadway
Deer Run Road	Canoe Creek Rd. to Hickory Tree Rd.
Emmett St	John Young Parkway to Broadway
Florida's Turnpike	SR 528 to SR 60
John Young Parkway	Columbia Ave. to US 192
Kissimmee Park Rd	US 192 to Old Canoe Creek Rd.
Lakeshore Blvd	Boggy Creek Rd. to Neptune Rd.
Laurence Silas Blvd.	Neptune Rd. to Oak St.
Main St.	US 192 to Drury
Michigan Ave.	US 192 to New Nolte Rd.
Neptune Rd.	US 441/Broadway Ave. to US 192/US 441
New Nolte Rd.	Kissimmee Park Rd to Canoe Creek Rd.
Oak St.	Central Ave. to Main St.
Old Canoe Creek Rd.	Kissimmee Park Rd. to CR 523/Canoe Creek Rd.
Partin Settlement Rd.	Neptune Rd to Lakeshore Blvd.
Shady Lane	US 192/US 441 to Neptune Rd.
Simpson Rd.	US 192 to Boggy Creek Rd.
US 17-92	Columbia Ave. to Martin Luther King Blvd.
US 192/US 441	Hoagland Blvd. to Narcoossee Road
Thacker Ave.	Columbia Ave. to US 192
Internal Spine Roads	Neptune Road to South end of Green Island DRI

* Intersection analyses of all roadways and ramps shall be included

25) Monitoring and Modeling Results/Mitigation.

- a. The Tohoqua DRI shall not commence beyond Phase 1 (an equivalent of 1,711 external peak hour trip ends) into Phase 2 whereas roadways/improvements are operating adversely and when service levels predicted by the Phase 2 M&M Study described above shows that the development contributes, or is projected to contribute with the development of Phase 2, five percent (5%) of the adopted LOS service volume of the roadway or intersection as determined by the monitoring program required in

- the preceding condition, unless mitigation measures or improvements are secured and committed for completion of construction during the phase in which the impacts occur. The schedule of required roadway improvements shall be tied to the number of external pm peak hour trips generated by residential and non-residential development within Phase 2. This Development Order shall be amended to incorporate the required improvements and the commensurate trip level by which the improvement is needed to support development.
- b. For the purposes of this Development Order, adequate “secured and committed” mitigation measures shall include one of the following:
- i. A roadway improvement scheduled for construction within the first three (3) years of the appropriate local government’s adopted comprehensive plan capital improvement element. A roadway improvement scheduled for construction within the first three (3) years of the Florida Department of Transportation’s five-year Work Program; or
 - ii. Binding, financially secured and irrevocable commitment by the Master Developer or other appropriate persons or entities for the design, engineering, land acquisition and actual construction of the necessary improvements, with the posting of a cash bond, surety bond, irrevocable letter of credit, escrow account or other security in a form acceptable to the agency of jurisdiction, within the next three years and incorporated by reference into the Development Order; or
 - iii. Any other mitigation option specifically provided for in this Development Order as specifically agreed upon through an amendment to the Development Order; or
 - iv. Any other mitigation option permitted by law, including a local government development agreement consistent with Chapter 163, Florida Statutes, which ameliorates the projected impact and is incorporated into the Development Order by amendment.
 - v. A proportionate share agreement provided by the Master Developer pursuant to Rule 9J-2.045(7) FAC and Chapter 380.06(15)(e), Florida

Statutes.

- vi. The mitigation measures detailed in the Condition 23 shall occur by the required threshold in order for the Tohoqua development to proceed through the balance of the applicable phase. If the Master Developer can demonstrate that a portion of a phase does not adversely affect the Regional Roadway network as determined by the monitoring and modeling tests discussed above and the local government agrees with this finding, then the Master Developer may proceed with that portion and only that portion of the Phase.

26) Toho Parkway. Toho Parkway (also known as Road A in the Road and Drainage Pond Agreement) and Toho Parkway West (also known as Road B in the Road and Drainage Pond Agreement).

- a. Dedication of Right of Way for Toho Parkway and Toho Parkway West Improvements. The Master Developer shall convey unencumbered title to right-of-way intended to support Toho Parkway and Toho Parkway West transportation improvements linking several large-scale projects within the East Lake Toho Planning District (the East Lake Toho Planning District is comprised of Mixed Districts #1 and #2 as described on the adopted Osceola County Future Land Use Map) and the South Lake Toho Planning District (Mixed Use District #4 and #5). The conveyance shall be made at the direction of County as provided below:
 - i. The Master Developer shall convey rights-of-way not to exceed 130' wide for Toho Parkway and a minimum of 80' wide for the Toho Parkway West transportation improvements. Additionally, the Master Developer shall convey or otherwise set aside sufficient land area to accommodate Stormwater Management requirements, and auxiliary lanes at intersections. The maximum number of travel lanes for any section of Toho Parkway shall not exceed four (4). The Master Developer shall complete the conveyance of rights-of-way within 180 days of receipt by Master Developer of a written notice from the County. The dimensions and alignments of Toho Parkway and Toho

Parkway West shall be in conformance with the overall need for continuous, direct, and efficient vehicular movement within the East Lake Toho Planning District, coupled with the need to support and further the concept of a pedestrian oriented community as outlined in this Development Order. The Toho Parkway and Toho Parkway West transportation improvements shall be designed to achieve transportation goals defined in the South Lake Toho and East Lake Toho Planning District Conceptual Master Plans. Toho Parkway shall be designed to achieve the functional equivalency of a minor arterial roadway as defined by the Osceola County Land Development Codes and Roadway Standards.

- ii. The Tohoqua DRI shall not commence beyond Phase 1 (an equivalent of 1,711 external peak hour trip ends) into Phase 2 until the Toho Parkway improvements within the Tohoqua development are constructed and operational sufficient to support the traffic generated by the Tohoqua development. Notwithstanding any of the foregoing, however, the following rights are reserved to the Master Developer:
 - (a) to ultimately incorporate the stormwater runoff from the Toho Parkway and Toho Parkway West improvements into a master drainage system for Tohoqua; and
 - (b) to make minor adjustments to any of the right-of-way that has been dedicated to the County if final engineering plans require the same consistent with the East Lake Toho Road Right of Way and Drainage Pond Dedication Agreement, recorded April 30, 2008 in OR Book 03679, Page 0780, Public Records of Osceola County, Florida.
- iii. The Toho Parkway West transportation improvement shall be designed to accommodate a dedicated transit facility in addition to two automotive travel lanes.
- iv. This condition may be superseded, in whole or in part, by separate Agreement between the County and the Master Developer and/or East Toho Association.

27) Roadway Widening; Alternative Mitigation. In the event that a roadway widening is identified which is not compatible with adopted policy of FDOT or local government, the party having either maintenance or jurisdictional responsibility for the facility shall determine alternate mitigation solutions to provide for the movement of people. Any dispute over alternative mitigation shall be resolved consistent with Condition 32 herein.

28) State and Regionally Significant Roadways. The Master Developer will direct future growth to identified urban areas, compatible with the existing and proposed regional transportation network and consistent with the Transportation Element of the Osceola County Comprehensive Plan. The following state and regionally significant roadway segments are projected to be both significantly impacted by traffic from the Tohoqua DRI and to operate below the adopted level of service standard. Mitigation must be in place prior to the Tohoqua DRI entering the designated phase unless the results of the monitoring and modeling study document that mitigation is not required for the amount requested for that phase or sub-phase. Alternative improvements may also be presented based on future monitoring and modeling program results. This list shall be amended based upon the results of the monitoring and modeling study as necessary and incorporated into the Development Order. In any event, the improvements identified in Phase 1 must be completed or funded prior to the issuance of building permits for Phase 2.

Table 28-1

Phase 1	Improvement
Intersection of Broadway & Neptune Road/Drury Avenue	Add additional SB left turn lane
Intersection of US 192 & Neptune Road	Add additional EB and WB through lanes
Intersection of SR 192 & Shady Lane	Add additional NB and SB through lanes
Neptune Road & Shady Lane extension	Add additional NB right turn lane
Boggy Creek Road & Simpson Road/Fortune Road	Add dedicated EB right turn lane, additional SB left turn lane and additional SB through lane
US 192 from Boggy Creek Road to Shady Lane	Add additional lanes in each direction (8 lane divided) or alternative capacity improvements
US 192 from Neptune Road to Columbia Avenue	Add additional lane in each direction (6 lane divided)
Simpson Road from Boggy Creek Road to Florida Turnpike (US 192)	Add additional lane in each direction (4 lane divided)

Phase 2	Improvement
Boggy Creek Road from Simpson Road to Buenaventura Boulevard	Add additional lanes in each direction (4 lane divided)
Kissimmee Park Road from US 192 to Neptune Road	Add additional lanes in each direction (6 lane divided)
Neptune Road from Lakeshore Boulevard to Project Entrance	Add additional lanes in each direction (6 lane divided)
Neptune Road from Kissimmee Park Road to US 192	Add additional lanes in each direction (6 lane divided)
Narcoossee Road from US 192 to Boggy Creek Road	Add additional lanes in each direction (4 lane divided)
Shady Lane from US 192 to Neptune Road	Add additional lanes in each direction (6 lane divided)
US 192 from Thacker Avenue to Shady Lane	Add additional lanes in each direction (8 lane divided) or alternative capacity improvement
Oak Street from Main Street to John Young Parkway	Add additional lanes in each direction (6 lane divided)
Donegan Avenue from John Young Parkway to Orange Blossom Trail (US 441)	Add additional lanes in each direction (4 lane divided)
Main Street (US 441) from Donegan Avenue to US 192	Add additional lanes in each direction (6 lane divided)

29) Proportionate Share Payments. If the monitoring and modeling results as set forth hereinabove show that improvements must be made to roadway facilities, and if mitigation is not provided as set forth in these conditions or as otherwise required pursuant to 9J-2.045(7), F.A.C., then prior to any construction of future phases and subject to the provisions of Section 380.06(15)(e), Florida Statutes, the Master Developer and/or Developer, the County, and the entity with jurisdiction over the roadway facility may enter into an agreement which ensures that:

- a. The proportionate share payment is made to the appropriate entity or entities to mitigate development impacts. Said proportionate share payment shall be used by the appropriate entity only for the design, engineering, right-of-way purchase, permitting and construction of improvement to the segments and intersections for which the payment is made; and
- b. Said proportionate share payment constitutes adequate provision for the public facilities needed with respect to the road segments to accommodate the impacts of the Tohoqua development through the Phase for which the fair share was calculated, as required by Section 380.06(15)(e)(2), Florida Statutes. All such proportionate fair share agreements shall be included in this Development Order by amendment pursuant to Section 380.06(19), Florida Statutes. The formula to be used to determine proportionate share contribution is as follows:

$$\frac{(\text{DRI Trips})}{(\text{SV Increase})} \times \text{Cost} = \text{Proportionate Share}$$

For this formula, DRI Trips is the cumulative number of trips from the Development expected to reach the roadway during the peak hour from the phase under development. SV Increase is the change in peak hour maximum service volume of the roadway resulting from construction of the improvement necessary to maintain the desired level of service; and Cost of Improvement is the cost (at the time of payment) of constructing an

- improvement necessary to maintain the desired level of service, including all improvement-associated costs (engineering design, right-of-way acquisition, planning, engineering, inspection, and other associated physical development costs directly required and associated with the construction of the improvement) as determined by the governmental agency having maintenance obligations for the roadway.
- c. The monitoring and modeling required prior to each phase shall be used to verify impacts from previous phases and to estimate more accurately probable impacts from later phases. If necessary, the proportionate share amount may be adjusted to reflect actual impacts from a phase and the more accurate information, which will result from the estimates for later phases; provided, however, that any impacts from prior phases which have been mitigated in accordance with any of the methods set forth in this Development Order shall not be included in any subsequent proportionate share calculations. If it is verified that the roadway improvements mentioned above are still needed, then the Development shall not proceed into later phases until either the proportionate share payment is made or the needed improvements are scheduled for construction in the applicable entities' work program within the first three years from the date when impacts are estimated to be significant and adverse.

30) County Role in Funding Roadway Improvements. Notwithstanding any provision contained herein to the contrary, except as provided by statute or specifically agreed to in writing, or as included in capital improvement plans, impact fee ordinances or other funding plans, the County and the entity with jurisdiction over the roadway facility shall have no financial responsibility to contribute to or participate in the funding of the design, engineering, permitting, or construction of roadway improvements.

31) Connectivity of Roadway Network. Consistent with Transportation Policy 1.1.3 in the Osceola County Comprehensive Plan (as adopted on December

10, 2007) and in order to minimize impacts to the roadway network, parcels within the Tohoqua DRI shall, subject to environmental constraints, be interconnected to the maximum extent feasible as determined by the County in cooperation with and considering input from the Master Developer. The Tohoqua DRI will generally be connected to existing neighborhoods and will tie into local streets, where feasible and as deemed appropriate by the County. The Master Developer shall cooperate with any County-supported efforts to continue roadways from or through the Property with other roadway facilities that are hereafter endorsed by the County.

32) Dispute Resolution. If the parties cannot reach agreement independently prior to the date when impacts are estimated to be significant and adverse, or if so desired by the parties at any time, then the issues in dispute shall be submitted to the ECFRPC for either voluntary mediation pursuant to its adopted dispute resolution process or to binding arbitration pursuant to the rules and procedures of the American Arbitration Association (AAA). The solutions recommended as a result of this process shall be implemented and the Development Order amended pursuant to Section 380.06(19), Florida Statutes, to include these solutions.

33) Deceleration Lanes. In order to provide access and to preserve operational capacity, left and right turn deceleration lanes shall be constructed by the Master Developer at all entrances to the Tohoqua development on collector and arterial roadways as determined by the County. The Master Developer and the County shall confirm the need for and the cost of signalization at the entrance(s) consistent with policies of the appropriate government entity and when the MUTCD (Manual on Uniform Traffic Control Devices) warrants are met. Signal costs at Tohoqua development entrances are the financial responsibility of the Master Developer through the buildout of the DRI, unless other arrangements are made in separate agreements with Osceola County.

34) Bicycle/Pedestrian Systems. In the interest of safety, and to promote alternative forms of transportation, the Master Developer shall provide the following bicycle and pedestrian systems:

- a. A primary 14 foot wide recommended, 10 foot minimum paved trail system shall traverse the project from the north to the south which will meet with trails within adjacent properties on the southeastern property boundary and to the northwest to enter into the Toho Preserve DRI. The trail shall be provided along the length of the lakeshore, to parks and to proposed public schools on and off site. Secondary trails shall connect to this main trail. Construction standards shall conform to latest state standards and criteria in the Florida Bicycle and Florida Pedestrian Facilities Planning and Design Handbooks.
- b. The on-site bicycle systems shall be connected into any adjacent external bicycle systems existing at the time of construction.
- c. Covered walkways shall be designed into the front of non-residential structures to the maximum extent practicable.
- d. In all areas of the Tohoqua development, where cycling will be accomplished on both sidewalk/bikeways and streets, appropriate signage identifying bike routes shall be installed.
- e. Special consideration shall be given to bikeways connecting neighboring residential areas to employment and commercial areas.
- f. Bicycle support facilities, such as parking and lockers, shall be provided at commercial areas and all work areas.
- g. Improvements to area roadways should be encouraged to incorporate bicycle and pedestrian facilities that are internal to the Tohoqua DRI. New roadways or reconstructed roadways approaching the Property shall include bicycle facilities.

35) Joint Monitoring and Modeling with other DRIs. In addition to the Monitoring and Modeling (M&M) prior to Phase 2, the Master Developer shall participate

with the other DRI projects on the east side of Lake Toho to perform a Biennial Monitoring and Modeling Study (BM&M) beginning when the third DRI in the Lake Toho area has received approval to move into Phase 2 development. The BM&M process shall continue to project buildout and the Master Developer shall pay its proportionate share of said study. The purpose is to evaluate the cumulative impacts of all the Lake Toho DRIs in a current and future year and to provide regional review and participation in the planning and implementation of transportation improvements to serve this growing area. Other DRI projects in the vicinity of Lake Toho will also be required to participate and fund their proportionate share in the BM&M. The results shall not stop any individual participant or the Master Developer here from developing through the Phase approved in this Development Order of the Phase 2 M&M. The BM&M shall be based on the following principles:

- a. Have a methodology approved by the same entities as the M&M which is updated every two years and measure impacts for a period of five years in the future unless different time frames are agreed to in the methodology.
- b. Conform to professional standards and address those questions contained in Question 21 of the DRI Application. Alternative travel modes shall be considered in the mitigation of impacts.
- c. Use available data, where practical, in conducting the study. Such data may include the trip generation and origin-destination data obtained in the individual M&M studies, Osceola County CMS data, and other information that may be available through the developer, Osceola County, the FDOT and others.
- d. Osceola County shall be responsible for determining the scheduling and refinement of these provisions.

Transportation: City of Kissimmee Impacts

36) Multimodal Alternatives Study.

- a. Prior to obtaining the first building permit in Phase 1, the Master Developer shall contribute up to a maximum of \$20,000, to fund a study consistent with Osceola County's multi-modal plans administered jointly by the City of Kissimmee, Osceola County, FDOT, and the regional authorities to identify multimodal alternatives that can be used by the Master Developer and/or Developer in place of roadway widening and intersection improvements within the City of Kissimmee's proposed Multimodal Transportation District (including those improvements discussed in this Development Order). The analysis of alternatives will focus on transit as a primary alternative with additional analysis on the potential for pedestrian and cycling infrastructure, parallel road widening, or new street connections as mitigation strategies. The transit component of the study will be used to assess potential bus rapid transit (BRT) alignment alternatives, identify service characteristics for the BRT route, estimate ridership, estimate capital, operating, and maintenance costs, and determine a proportionate share funding strategy. The study will be designed to help meet any criteria necessary to qualify for state and federal transit funding through New Starts, Small Starts, or other potential revenue sources, as appropriate. LYNX, Osceola County, the FDOT and the ECFRPC shall be invited to participate in the determination of study parameters and given a copy of the final product document.
- b. The study will be overseen by a steering committee which will include a representative from the City of Kissimmee, the County, the City of St. Cloud, the FDOT, and LYNX. The committee will assist the City of Kissimmee in developing the scope and methodology and will periodically review study components during the study process. Study findings and recommendations for Phase 2 mitigation, if available, will be submitted to the County and the City of Kissimmee for review and acceptance. If the

City of Kissimmee chooses not to participate in this study, the County reserves the right to undertake the study.

37) Regional Traffic Model. Prior to the initiation of Phase 2, the regional traffic model shall be used to identify roadway segments within the City of Kissimmee with significant traffic impacts, where significance is defined as a contribution of traffic from the Tohoqua DRI equal to or greater than five percent of a roadway segment's capacity at the adopted level of service. For any of these roadway segments and adjacent intersections projected to also have adverse impacts, defined as carrying traffic greater than the capacity at the adopted level of service, the Master Developer and/or other Developers developing in Tohoqua shall be responsible for contributing a proportionate share of the cost of needed roadway improvements to mitigate the significant and adverse impacts. Potential mitigation projects may include but shall not be limited to the following:

- a. Implementation of the proposed bus rapid transit (BRT) based on the results of the study identified in Section 34;
- b. Design, land acquisition, or construction of the City of Kissimmee's Intermodal Transportation Center;
- c. Parallel local or collector road connections to relieve traffic from major thoroughfares;
- d. Pedestrian, cycling, or transit capital improvements as identified through the City of Kissimmee's multi-modal transportation analysis to achieve an improved multimodal level of service; or
- e. Widening existing roads where feasible and appropriate.

Transportation: Alternative Transit

38) Alternative Transit Responsibilities. The Master Developer and/or Developers developing in Tohoqua shall promote and encourage on-site employers to offer variable work hours and flextime schedules for their employees as one means of reducing peak hour travel demand. Acceptable methods for

“promoting and encouraging” include, but are not limited to; provisions in land sale contracts encouraging retail, office and institutional uses offer variable work hour and flextime schedules to employees; establishment of or participation in a Transportation Management Association whose purposes include promoting and encouraging travel demand management; or, provisions in the Master Covenants, Conditions and Restrictions for the Tohoqua development that provide a mechanism to encourage that employers offer work hour and flextime options. The Master Developer shall select the method or methods for compliance with this requirement prior to the sale of any land for retail, office or institutional use and will notify Osceola County in writing of its selection and means of implementing the selection. As part of subsequent transportation modeling and monitoring programs for Phase 2, an inventory of employer based variable work hour and flextime programs will be conducted and the impact of the program evaluated in terms of reductions in peak hour travel produced by this project.

39) Transit, Para-Transit and Ridesharing Responsibilities. The Master Developer and Developers developing within Tohoqua shall promote the use of transit, para-transit and ridesharing programs by tenants, residents and employees. Promotion of the use of such programs may be accomplished through: the display of service schedules in prominent public gathering areas and near service stops; preferential parking for vans and cars that are part of a ridesharing program; publication of newsletters delivered to tenants, residents and employees that provide ridesharing information; and financial and operational participation of the Master Developer or its successor in a Toho Planning District Alternative Transportation Modes (ATM) Program whose purposes include promoting ridesharing and whose resources support a full-time rideshare coordinator. However, nothing contained in this Development Order shall be construed to require that the Master Developer or its successor contribute to the operational costs of any transit system beyond the Master Developer obligation to contribute a fair share to the cost of a full time rideshare coordinator. Master Developer or its successor’s

participation in the latter method is mandatory. The Master Developer shall select the method or methods for compliance with this requirement prior to the sale of any land for residential, retail, office or public institutional use and will notify Osceola County in writing of its selection and means of implementing the selection. As part of subsequent transportation modeling and monitoring programs for Phase 2, a rideshare program will be evaluated and the impact evaluated in terms of use and reductions in peak hour travel attributable to the program.

40) Alternative Transportation Modes Plan. The Master Developer or its successor shall participate in the funding, preparation and implementation of an Alternative Transportation Modes (ATM) plan for the East Lake Toho Planning District. Osceola County, in conjunction with LNYX and other service agencies, will undertake the preparation of this plan with the participation of property owners within the East Lake Toho Planning District and will include the plan as part of a future amendment of the East Lake Toho Planning District Conceptual Plan and Osceola County Comprehensive Plan. The recommendations of the plan shall address, at a minimum:

- a. Park and ride facilities that support ridesharing programs as well as local or regional transit services provided through LYNX. This category of recommendations shall also address the implementation responsibilities for each Master Developer identified within the East Lake Toho Planning District, Osceola County and other property owners.
- b. Transit services that are Planning District based and/or are part of a larger regional system provided through LYNX. This category of recommendations shall also address the need and location for transit stops, bus pullover facilities, integration of transit facilities within neighborhood, community and/or urban centers and service to neighborhoods and employment centers and integration with alternative modes facilities and services. In addition, the recommendations shall address the implementation responsibilities for each Master Developer

identified within the East Lake Toho Planning District, Osceola County and other property owners.

General Provisions

41) School Impacts.

- a. The Tohoqua DRI shall comply with the Osceola County Public Schools Facilities Element (PSFE) and Concurrency Management System (CMS), when adopted by the Board of County Commissioners. Residential development shall not be approved until the PSFE and CMS have been adopted by Osceola County, and a Concurrency Mitigation Plan/Funding Agreement for the Tohoqua DRI or the East Lake Toho Planning District (the Concurrency Mitigation Plan/Funding Agreement may also be known as a Master School Siting Plan and School Funding Agreement) has been proffered to and approved by the Osceola County School Board and the Osceola County Board of County Commissioners. Should Osceola County be prohibited or delayed by legal action from adopting or implementing the PSFE and CMS, development permits may be issued by the County pursuant to then existing land development and concurrency management regulations.
- b. Both Osceola County, through the Board of County Commissioners, and the School Board of Osceola County (SBOC) have a strong preference for the implementation of a Master School Siting Plan encompassing the East Lake Toho Planning District and a Master School Funding Plan and Agreement between the SBOC and the major property owners within the Toho Planning District.
- c. At any time that the Master Developer or developer elects to convert commercial land use to residential land use via the land use conversion matrix, the additional impacts to the public school system shall be reviewed and addressed by the School District of Osceola County.

42) Energy Efficiency. In order to augment the Green Building practices set forth in Conditions 20 and 21 above, the Master Developer will undertake the following additional green building techniques in the development of Tohoqua, to-wit:

- a. Residential construction shall utilize the Energy Star™ standard in the design and construction of new homes.
- b. The applicant shall provide educational and promotional programs to encourage sustainable development and green building practices to the home builders and home owners. This program will not mandate or enforce specific sustainable development and green building practices except to the extent otherwise provided for herein, but rather encourage these practices through communication and education. A primary focus for developer education shall be the importance of planning for green development at the initial stages of development to minimize costs.
- c. The Master Developer shall include in the Biennial Reports the actions being taken to promote sustainable practices, including submission of current materials being provided and an accounting of development meeting green building standards. The educational promotional program will include:
 - i. Green building handbook,
 - ii. Sales center display,
 - iii. Web based content,
 - iv. Costs benefit analysis information and education for both builders and potential homeowners.

43) Institutional and Public Safety Uses.

- a. The initial Planned Development application for the Tohoqua site shall indicate the location of planned site(s) for civic, institutional and public safety land uses such as churches, libraries, post office and fire station. In addition to graphically describing the location of such sites, the Master

Developer will indicate an approximate time or timeframe when these sites would be available for the intended use which would mean that all necessary infrastructure was available to support full development of a site for its intended use.

44) Affordable Housing. The Affordable Housing Analysis prepared for Tohoqua DRI ADA using the approved ECFRPC methodology concluded that Tohoqua has no affordable housing mitigation requirements for Phase 1. Affordable housing may be required in Phase 2 of the Tohoqua development. The methodology to determine the number of and product types of on-site affordable housing units that may be required in Phase 2 will be governed by the Osceola County Land Development Code. However, should Osceola County not have an adopted affordable or work-force housing ordinance prior to the commencement of Phase 2, the Master Developer shall conduct a study to determine very low, low and moderate income housing needs using the then current ECFRPC Affordable Housing Methodology. Additional studies shall be conducted for all future phases prior to their commencement unless Osceola County has an adopted Work-Force Housing ordinance. If the ECFRPC methodology is applied, compliance with the ECFRPC methodology shall also mean meeting the requirements to appropriately mitigate impacts for all phases as identified in said methodology, however, the preferred mitigation is construction of attainable-workforce or affordable housing within the Tohoqua DRI. The developer will target approximately ten percent of the residential development within Phase 2 to be constructed as either for sale or rental housing product that is attainable by those persons whose incomes fall between eighty percent (80%) and one hundred thirty percent (130%) of Osceola County's Average Median Income. Continuing affordability provisions may, if appropriate, be included in the leasing agreements, deed for the land or other applicable mechanisms. In the event the Tohoqua DRI must mitigate for very low and/or low affordable housing deficiencies, those impacts shall not be required to be mitigated on-site.

45) Downzoning, Unit Density or Intensity Reduction. For a period of twenty (20) years from the effective date of this Development Order, the approved development described in this Development Order shall not be subject to downzoning, unit density reduction or intensity reduction unless the County can demonstrate substantial changes in the conditions underlying the approval of this Development Order have occurred, or that this Development Order was based upon substantially inaccurate information provided by the owner or Master Developer, or that the change is clearly established by the County to be essential to the public health, safety and general welfare.

a. In the event the Master Developer, its successors, grantees or assigns, violates any of the conditions of this Development Order, as amended, or otherwise fails to act in substantial compliance with the Development Order, as amended, Osceola County may stay the effectiveness of the Development Order, as amended, on the identifiable tract or parcel, or the portion of a tract or parcel owned by the person or entity violating a condition of the Development Order, as amended, and within the property described in Exhibit "A" attached hereto, and all further development permits, approvals and services for the development of said tract or parcel, or portion of tract or parcel shall be withheld until the violation is corrected. For purposes of this section, the term "tract" and "parcel" shall be defined to mean:

i. Any quantity of land capable of being described with such definiteness that its boundaries may be established, which is designated by its owner or Master Developer as land to be used or developed as a unit or which has been used or developed as a unit, located within the legal description set out in Exhibit "A" attached hereto and the Master Development Plan (Map "H") attached as Exhibit "B".

b. The Master Developer, its successors, grantees, or assignees shall be given a written notice of violation by Osceola County and a reasonable period of time to cure the violation. The Master Developer may petition

the County Commission for review of the notice of violation, prior to the stated compliance date, and said review shall be conducted at a public hearing. Filing of a petition for review shall delay the effectiveness of the notice of violation until the review has been concluded.

46) Biennial Report Requirements. In accordance with Section 380.06(18) Florida Statutes, the Master Developer, its successors or assigns, shall submit a Biennial Report on or before the two year anniversary date of this Development Order and in every other or second year thereafter during the buildout of the development plan ("Biennial Report"). The Biennial Report will be submitted to the County, the ECFRPC, the FDCA, the FDEP, the FDOT, the SFWMD and any other affected permitting agencies formally requesting copies of the same in writing to the Master Developer. The Biennial Report shall include information required under the Conditions of Approval and any and all other and further information required under applicable law. The Biennial Report shall include a statement that all persons/agencies listed above or otherwise entitled to receive the Biennial Report have been sent copies and the failure to timely submit the Biennial Report may subject the Master Developer and the Tohoqua DRI to the temporary suspension of this Development Order in accordance with Section 380.06(18) Florida Statutes.

47) Modifications to the Development Order. The Master Developer shall submit, simultaneously, to Osceola County, the East Central Florida Regional Planning Council ("ECFRPC"), and the Florida Department of Community Affairs (DCA) any requests for approval of a proposed change to this Development Order. This submission shall be in a format established by the DCA and shall include, at a minimum, the precise language which is proposed for deletion or addition to the Development Order and a statement summarizing all previous changes that have been made to the Development Order. Certified copies of this Development Order shall be transmitted by Osceola County, by certified mail to the Florida Department of Community Affairs, the East Central Florida Regional Planning Council, the Master

Developer, and any and all owners of land governed by this Development Order.

48) Rendition. Osceola County shall render a copy of this Development Order with all attachments, certified as complete and accurate, by certified mail, return requested, to the Florida Department of Community Affairs, Bureau of Local Planning; ECFRPC; and the Master Developer.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA THIS _____ DAY OF _____, 2007.

BOARD OF COUNTY COMMISSIONERS OF
OSCEOLA COUNTY, FLORIDA

By: _____
Chairman/Vice-Chairman

ATTEST:

OSCEOLA COUNTY CLERK OF THE BOARD

BY: _____
Clerk/Deputy Clerk of the Board

STATE OF FLORIDA
COUNTY OF OSCEOLA, ss:

I HEREBY CERTIFY that on the _____ day of _____, 200__ before me
personally appeared _____ and
_____, respectively as Chairman and Clerk of the
Board of County Commissioners of Osceola County, Florida and acknowledged
that they executed the foregoing.

WITNESS my signature and official seal at Kissimmee, Osceola County, Florida,
the day and year last aforesaid.

By: _____

(SEAL)
Notary Public, State of Florida

My Commission Expires:

Glossary of Abbreviations Used

ACOE	Army Corps of Engineers
ADA	Application for Development Approval
AM&M	Annual Monitoring & Modeling
BRT	Bus Rapid Transit
CCR	Codes, Covenants and Restrictions
CDD	Community Development District
CSDA	Critical Smoke Dispersal Area
DCA	Department of Community Affairs
ECFRPC	East Central Florida Regional Planning Council
<u>EIP</u>	<u>Engineering Improvement Plan</u>
ERP	Environmental Review Permit
FDEP	Florida Department of Environmental Protection
FDOT	Florida Department of Transportation
FFWCC	Florida Fish and Wildlife Conservation Commission
FIHS	Florida Intrastate Highway System
LEED	Leadership in Energy and Environmental Design
LOS	Level of Service
MMTD	Multimodal Transit District
NOPC	Notification of a Proposed Change
OCSD	Osceola County School District
OHW	Ordinary High Water
SFWMD	South Florida Water Management District
TMDL	Total Maximum Daily Load
USFWS	US Fish and Wildlife Service

Exhibit A Legal Description

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SECTION 8, TOWNSHIP 26 SOUTH, RANGE 30 EAST AND THE WESTERLY TOP OF BANK OF CANAL C-31 (ST. CLOUD CANAL), SAID POINT BEING NORTH 89°42'12" WEST A DISTANCE OF 4522.17 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8; THENCE RUNNING ALONG SAID CANAL THE FOLLOWING COURSES; THENCE SOUTH 53°55'58" WEST A DISTANCE OF 421.17 FEET; THENCE SOUTH 64°56'34" WEST A DISTANCE OF 199.19 FEET TO A POINT ON THE APPROXIMATE HIGH WATER LINE OF LAKE TOHOPEKALIGA; THENCE ALONG SAID HIGH WATER LINE THE FOLLOWING COURSES; THENCE NORTH 63°53'58" WEST A DISTANCE OF 433.15 FEET; THENCE SOUTH 54°26'24" WEST A DISTANCE OF 238.21 FEET; THENCE SOUTH 64°44'40" WEST A DISTANCE OF 69.18 FEET; THENCE SOUTH 54°26'48" WEST A DISTANCE OF 98.95 FEET; THENCE SOUTH 44°44'22" WEST A DISTANCE OF 75.48 FEET; THENCE SOUTH 52°04'26" WEST A DISTANCE OF 62.60 FEET; THENCE SOUTH 60°34'34" WEST A DISTANCE OF 55.65 FEET; THENCE SOUTH 73°17'53" WEST A DISTANCE OF 55.70 FEET; THENCE NORTH 85°52'23" WEST A DISTANCE OF 36.05 FEET; THENCE NORTH 66°14'49" WEST TO A DISTANCE OF 40.16 FEET; THENCE NORTH 51°13'56" WEST A DISTANCE OF 57.61 FEET; THENCE NORTH 58°04'36" WEST A DISTANCE OF 67.74 FEET; THENCE NORTH 52°51'37" WEST A DISTANCE OF 84.66 FEET; THENCE NORTH 84°49'29" WEST A DISTANCE OF 83.30 FEET; THENCE SOUTH 89°45'14" WEST A DISTANCE OF 69.95 FEET; THENCE SOUTH 75°06'02" WEST A DISTANCE OF 94.21 FEET; THENCE NORTH 89°14'38" WEST A DISTANCE OF 64.95 FEET; THENCE NORTH 78°48'18" WEST A DISTANCE OF 73.24 FEET; THENCE NORTH 68°00'24" WEST A DISTANCE OF 72.53 FEET; THENCE NORTH 57°50'35" WEST A DISTANCE OF 73.42 FEET; THENCE NORTH 55°31'41" WEST A DISTANCE OF 61.07 FEET; THENCE NORTH 51°16'48" WEST A DISTANCE OF 59.37 FEET; THENCE NORTH 42°33'53" WEST A DISTANCE OF 63.66 FEET; THENCE NORTH 28°15'36" WEST A DISTANCE OF 56.56 FEET; THENCE NORTH 26°25'04" WEST A DISTANCE OF 123.54 FEET; THENCE NORTH 17°02'39" WEST A DISTANCE OF 92.86 FEET; THENCE NORTH 01°25'02" WEST A DISTANCE OF 115.18 FEET; THENCE NORTH 08°44'32" EAST A DISTANCE OF 483.97 FEET; THENCE NORTH 06°22'22" EAST A DISTANCE OF 99.12 FEET; THENCE NORTH 11°55'33" EAST A DISTANCE OF 108.48 FEET; THENCE NORTH 03°23'12" EAST A DISTANCE 83.49 FEET; THENCE NORTH 00°41'35" WEST A DISTANCE OF 178.85 FEET; THENCE NORTH 06°10'32" WEST A DISTANCE OF 61.43 FEET; THENCE NORTH 15°01'31" WEST A DISTANCE OF 156.53 FEET; THENCE NORTH 23°34'12" WEST A DISTANCE OF 211.68 FEET; THENCE NORTH 22°23'26" WEST A DISTANCE OF 196.40 FEET; THENCE NORTH 08°26'49" WEST A DISTANCE OF 47.93 FEET; THENCE NORTH 21°39'44" WEST A DISTANCE OF 171.97 FEET; THENCE NORTH 26°26'32" WEST A DISTANCE OF 202.70 FEET; THENCE NORTH 31°33'27" WEST A DISTANCE OF 202.80 FEET; THENCE NORTH 40°53'33" WEST A DISTANCE OF 177.86 FEET; THENCE NORTH 46°47'50" WEST A DISTANCE OF 208.67 FEET; THENCE NORTH 53°15'46" WEST A DISTANCE OF 170.23 FEET; THENCE NORTH 71°29'16" WEST A DISTANCE OF 287.18 FEET; THENCE NORTH 67°24'32" WEST A DISTANCE OF 246.16 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF BLOCK 20, LOT 3 OF FLORIDA DRAINED LAND COMPANY'S SUBDIVISION NO. 1 AS RECORDED IN PLAT BOOK "B", PAGES 65-66 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA; THENCE NORTH 00°05'10" EAST ALONG SAID SOUTHERLY EXTENSION AND ALONG THE WEST LINE OF BLOCK 20, LOT 3 A DISTANCE OF 1474.43 FEET; THENCE SOUTH 89°46'33" EAST A DISTANCE OF 310.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF A 40 FOOT PLATTED RIGHT-OF-WAY AS SHOWN ON THE SAID FLORIDA DRAINED LAND COMPANY'S SUBDIVISION NO. 1 THENCE NORTH 00°11'55" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 953.38 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF A 40 FOOT PLATTED RIGHT-OF-WAY; THENCE NORTH 89°47'59" WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 258.07 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MACY ISLAND ROAD AS SHOWN IN THE COUNTY ROAD MAP BOOK 1, PAGES 82-89 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING COURSES; THENCE NORTH 35°30'02" EAST A DISTANCE OF 952.17 FEET; THENCE NORTH 06°05'59" WEST A DISTANCE OF 34.53 FEET; THENCE NORTH 15°47'13" WEST A DISTANCE OF 23.72 FEET;

THENCE NORTH 22°51'03" WEST A DISTANCE OF 445.10 FEET TO A POINT OF CURVATURE SAID CURVE CURVES TO THE RIGHT, HAS A RADIUS OF 465.00 FEET, AND AN INCLUDED ANGLE OF 20°08'01" (CHORD BEARING: NORTH 12°47'02" WEST, CHORD DISTANCE OF 162.56 FEET) RUN ALONG SAID CURVE A DISTANCE OF 163.40 FEET TO A POINT OF TANGENCY, THENCE NORTH 02°43'01" WEST A DISTANCE OF 1491.03 FEET; THENCE NORTH 02°50'29" WEST A DISTANCE OF 1684.09 FEET; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 89°44'47" EAST A DISTANCE OF 1096.23 FEET TO A POINT ON THE WEST LINE OF BLOCK 25, LOT 5 OF SAID FLORIDA DRAINED LAND COMPANY'S SUBDIVISION NO. 1; THENCE NORTH 00°04'41" EAST ALONG SAID WEST LINE OF LOT 5 A DISTANCE OF 730.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 6, TOWNSHIP 26 SOUTH, RANGE 30 EAST; THENCE SOUTH 89°45'47" EAST A DISTANCE OF 1650.92 FEET TO THE NORTHEAST CORNER OF SAID SECTION 6; THENCE SOUTH 00°08'09" WEST, ALONG THE EAST LINE OF SAID SECTION 6, A DISTANCE OF 86.64 FEET; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 197.37 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF COOLIDGE STREET AS SHOWN ON THE PLAT OF TOLIGA MANOR, UNIT C AS RECORDED IN PLAT BOOK 1, PAGE 193; THENCE SOUTH 29°17'53" WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE 50.00 FEET; THENCE SOUTH 60°37'11" EAST ALONG THE NORTH LINE OF BLOCK 17 OF SAID TOLIGA MANOR, UNIT C A DISTANCE OF 600.00 FEET TO THE NORTHWEST CORNER OF BLOCK 17, LOT 12; THENCE SOUTH 29°17'53" WEST A DISTANCE OF 540.00 FEET TO THE NORTHWEST CORNER OF BLOCK 32, LOT 12 OF SAID TOLIGA MANOR, UNIT C; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 250.00 FEET TO THE NORTHWEST CORNER OF BLOCK 32, LOT 17; THENCE SOUTH 29°17'53" WEST A DISTANCE OF 115.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 17; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 210.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 31, LOT 1; THENCE NORTH 29°17'53" EAST A DISTANCE OF 155.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 22, LOT 36; THENCE NORTH 60°37'11" WEST A DISTANCE OF 50.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 36, ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BROADWAY STREET; THENCE NORTH 29°17'53" EAST A DISTANCE OF 540.00 FEET TO THE SOUTHWEST CORNER OF BLOCK 4, LOT 15; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 100.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 4, LOT 14; THENCE NORTH 29°17'53" EAST A DISTANCE OF 105.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 14; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 100.00 FEET TO THE NORTHWEST CORNER OF BLOCK 4, LOT 11; THENCE NORTH 29°17'53" EAST A DISTANCE OF 245.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE ABANDONED RAILROAD RIGHT-OF-WAY, SAID POINT IS ALSO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NEPTUNE ROAD; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 1400.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE SOUTH 29°17'53" WEST A DISTANCE OF 890.00 FEET TO THE SOUTHWEST CORNER OF BLOCK 23, LOT 23 OF TOLIGA MANOR, UNIT B AS RECORDED IN PLAT BOOK 1, PAGE 139; THENCE SOUTH 60°37'11" EAST A DISTANCE OF 250.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 23, LOT 13 OF TOLIGA MANOR, UNIT B, ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SHERIDAN ROAD; THENCE NORTH 29°17'53" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 863.19 TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF FLORIDA'S TURNPIKE PER FLORIDA TURNPIKE AUTHORITY RIGHT-OF-WAY MAP STATION 4443+03.50 TO 4565+45.63; THENCE ALONG SAID RIGHT-OF-WAY LINE FOLLOWING COURSES AND DISTANCES; THENCE SOUTH 52°05'25" EAST A DISTANCE 211.30 FEET; THENCE SOUTH 60°38'46" EAST A DISTANCE OF 495.98 FEET; THENCE SOUTH 15°33'39" EAST A DISTANCE OF 1812.91 FEET TO A POINT ON THE TOP OF BANK OF CANAL C-31 (ST. CLOUD CANAL); THENCE RUN ALONG SAID CANAL THE FOLLOWING COURSES; THENCE SOUTH 25°31'13" WEST A DISTANCE OF 334.68 FEET THENCE SOUTH 23°33'24" WEST A DISTANCE OF 865.57 FEET; THENCE SOUTH 23°49'58" WEST A DISTANCE OF 794.97 FEET; THENCE SOUTH 24°51'36" WEST A DISTANCE OF 1331.39 FEET; THENCE SOUTH 23°12'07" WEST A DISTANCE OF 4100.95 FEET; THENCE SOUTH 28°16'20" WEST A DISTANCE OF 374.72 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

BLOCK 25, LOT 6 AND 35; BLOCK 28, LOTS 22 AND 23; BLOCK 57, LOT 4; BLOCK 73, LOT 25, TOLIGA MANOR UNIT A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 129, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA.

ALSO, LESS AND EXCEPT:

BLOCK 6, LOTS 9 AND 10; BLOCK 15, LOTS 1, 2, AND 36; BLOCK 24, LOTS 26 AND 27; BLOCK 29, LOTS 23, 24, 25, AND 26, TOLIGA MANOR, UNIT B, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 139, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA.

ALSO, LESS AND EXCEPT:

BLOCK 31, LOT 3; TOLIGA MANOR, UNIT C, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 193, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA

ALSO, LESS AND EXCEPT:

THE SOUTH 60 FEET OF THE NORTH 710 FEET OF LOTS 6, 7, 8, BLOCK 25, AND THAT PORTION OF THE NORTH 60 FEET OF LOT 7, BLOCK 23, LYING EAST OF MACY ISLAND ROAD, SECTION 6, TOWNSHIP 26 SOUTH, RANGE 30 EAST, ACCORDING TO THE PLAT OF FLORIDA DRAINED LAND COMPANY'S SUBDIVISION NO. 1, AS RECORDED IN PLAT BOOK 8, PAGES

Exhibit B Master Plan / DRI Map "H"

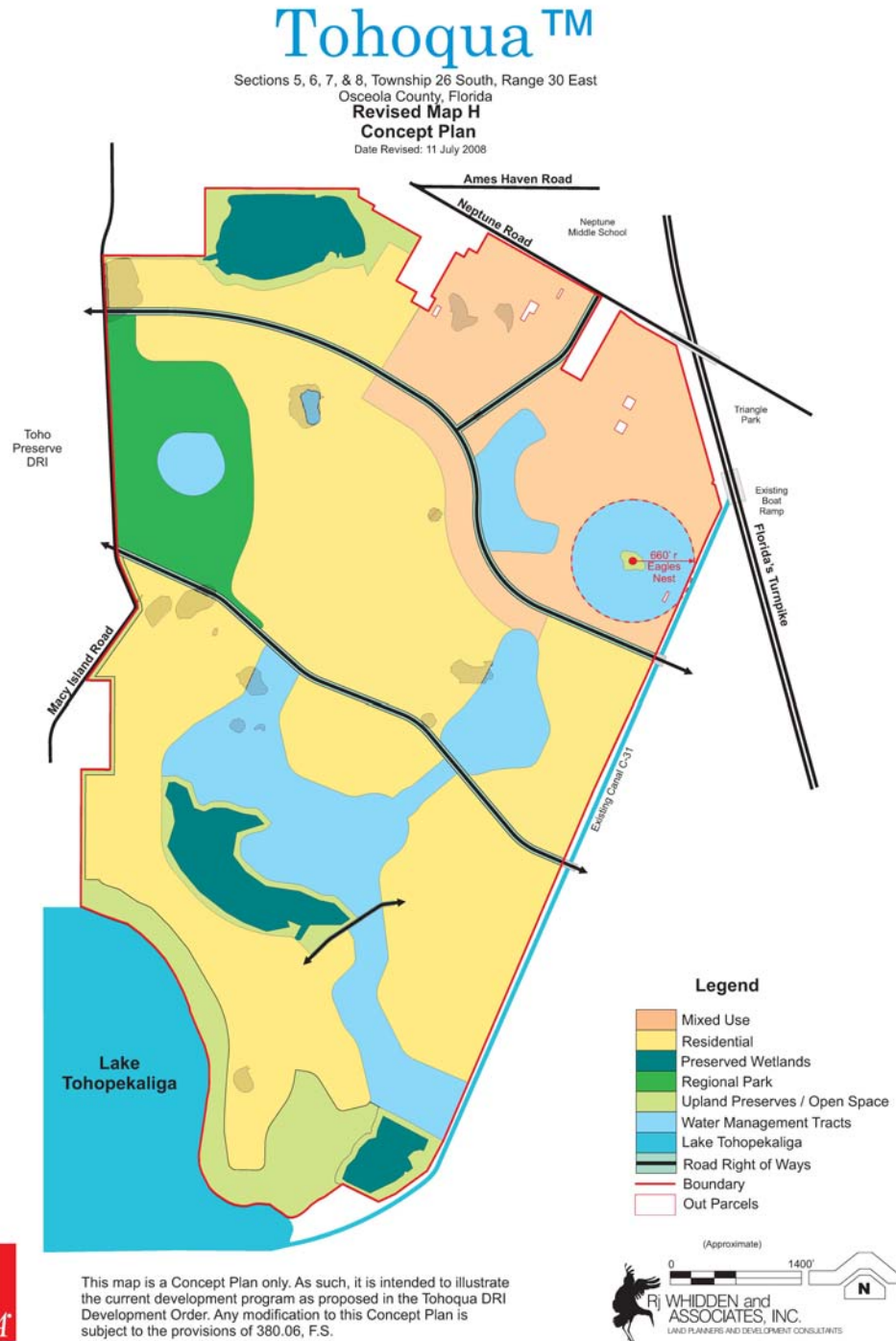


Exhibit C Land Use Conversion Table

Tohoqua DRI
Land Use Conversion Table

Land Uses (Convert From)	Land Uses (Convert To)						
	Single Family - Detached (DU)	Multi Family (DU)	Elementary School (Students)	Middle School (Students)	Institutional / Civic (KSF)	Office (KSF)	Retail (KSF)
Single Family - Detached (DU)		2.1551	2.8123	5.2311	0.3102	0.5288	0.1512
Multi Family (DU)	0.4640		1.3050	2.4273	0.1439	0.2454	0.0702
Elementary School (Students)	0.3556	0.7663		1.8601	0.1103	0.1880	0.0538
Middle School (Students)	0.1912	0.4120	0.5376		0.0593	0.1011	0.0289
Institutional / Civic (KSF)	3.2235	6.9470	9.0656	16.8628	1.0000	1.7047	0.4875
Office (KSF)	1.8910	4.0752	5.3180	9.8919	0.5866		0.2860
Retail (KSF)	6.6121	14.2496	18.5952	34.5886	2.0512	3.4966	

Sample Conversions:

1. If you wanted to convert 100 DU's of Single Family to Condominiums:

$$100 \text{ DU Single Family} \times 2.1551 = 216 \text{ DU Condominiums}$$

2. If you wanted to convert 50 KSF of Retail to Single Family:

$$50 \text{ KSF Retail} \times 6.6121 = 331 \text{ DU Single Family}$$

Source: GMB Engineers & Planners, Inc.

Notes: The development will be limited to maximum and minimum changes consistent with F.S. 380.06 19(b)

The land use matrix was developed using the p.m. peak hour trips generated by the Tohoqua DRI - Phase I (1,711 peak hour trips)

The following summarizes the p.m. peak hour trip generation rates used in this analysis:

- Single Family - Detached : 0.79 trips per DU
- Multi Family : 0.37 trips per DU **
- Elementary School : 0.28 trips per Student
- Middle School : 0.15 trips per Student
- Institutional / Civic : 2.54 trips per KSF
- Office : 1.49 trips per KSF
- Retail : 5.21 trips per KSF

** Multi Family is any combination of condominiums, apartments, townhomes, etc.

Tohoqua DRI
Land Use Conversion Table

Land Uses (Convert From)	Land Uses (Convert To)							
	Single Family - Detached (DU)	Multi Family (DU)	Elementary School (Students)	Middle School (Students)	Institutional / Civic (KSF)	Hotel (Rooms)	Office (KSF)	Retail (KSF)
Single Family - Detached (DU)		2.1551	2.8123	5.2311	0.3102	1.3355	0.5288	0.1512
Multi Family (DU)	0.4640		1.3050	2.4273	0.1439	0.6197	0.2454	0.0702
Elementary School (Students)	0.3556	0.7663		1.8601	0.1103	0.4749	0.1880	0.0538
Middle School (Students)	0.1912	0.4120	0.5376		0.0593	0.2553	0.1011	0.0289
Institutional / Civic (KSF)	3.2235	6.9470	9.0656	16.8628		4.3051	1.7047	0.4875
Hotel (Rooms)	0.7488	1.6137	2.1058	3.9169	0.2323		0.3960	0.1132
Office (KSF)	1.8910	4.0752	5.3180	9.8919	0.5866	2.5254		0.2860
Retail (KSF)	6.6121	14.2496	18.5952	34.5886	2.0512	8.8305	3.4966	

Sample Conversions:

1. If you wanted to convert 100 DU's of Single Family to Condominiums:

$$100 \text{ DU Single Family} \times 2.1551 = 216 \text{ DU Condominiums}$$

2. If you wanted to convert 50 KSF of Retail to Single Family:

$$50 \text{ KSF Retail} \times 6.6121 = 331 \text{ DU Single Family}$$

Source: GMB Engineers & Planners, Inc.

Notes: The development will be limited to maximum and minimum changes consistent with F.S. 380.06 19(b)

The land use matrix was developed using the p.m. peak hour trips generated by the Tohoqua DRI - Phase I (1,711 peak hour trips)

The following summarizes the p.m. peak hour trip generation rates used in this analysis:

- Single Family - Detached : 0.79 trips per DU
- Multi Family : 0.37 trips per DU **
- Elementary School : 0.28 trips per Student
- Middle School : 0.15 trips per Student
- Institutional / Civic : 2.54 trips per KSF
- Hotel : 0.59 trips per Room
- Office : 1.49 trips per KSF
- Retail : 5.21 trips per KSF

** Multi Family is any combination of condominiums, apartments, townhomes, etc.