

RESOLUTION NO. R-96-535

RESOLUTION APPROVING ZONING PETITION DOA81-20(B)
DEVELOPMENT ORDER AMENDMENT
PETITION OF McCAW COMMUNICATIONS OF FLORIDA, INC.
BY ALAN J. CIKLIN, **ESQ.**, AGENT
CELLULAR ONE

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, and the Palm Beach County Unified Land Development Code, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Petition DOA81-20B was presented to the Board of County Commissioners at a public hearing conducted on April 25, 1996; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This Development Order Amendment is consistent with the Palm Beach County Comprehensive Plan.
2. This Development Order Amendment complies with the relevant and appropriate portions of Article 6, Supplementary Use Standards; of the Palm Beach County Unified Land Development Code.
3. This Development Order Amendment is consistent with the requirements of the Palm Beach County Unified Land Development Code.
4. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
5. This Development Order Amendment, with conditions as adopted, complies with the standards imposed on it by applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
6. This Development Order Amendment meets applicable local land development regulations.
7. This Development Order Amendment, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent **lands.**

8. This Development Order Amendment has a concurrency determination and therefore complies with Article 11 (Adequate Public Facility Standards) of the Palm Beach County Unified Land Development Code.
9. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
10. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Petition DOA81-20(B), the petition of McÇaw Communications of Florida, Inc. by Alan J. Ciklin, Esq., agent, for a Development Order Amendment (DOA) to delete acreage from a previously approved development order, now legally described in EXHIBIT A, attached hereto and made a part hereof, generally located as shown on a vicinity sketch attached as EXHIBIT B, attached hereto and made a part hereof, was approved on April 25, 1996, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

The motion was seconded by Commissioner Lee and, upon being put to a vote, the vote was as follows:

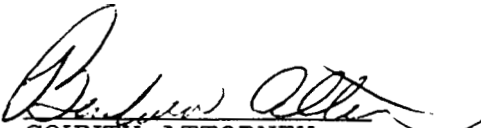
Ken Foster, Chair	--	Absent
Burt Aaronson	--	Aye
Maude Ford Lee	--	Aye
Karen T. Marcus	--	Aye
Mary McCarty	--	Absent
Warren Newell	--	Aye
Carol A. Roberts	--	Absent

The Chair thereupon declared that the resolution was duly passed and adopted on April 25, 1996.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

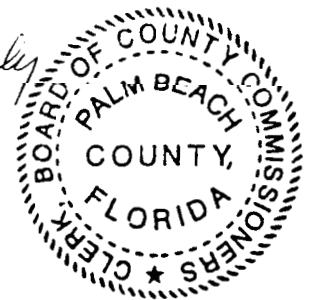


EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTION 35, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL (STATE ROAD 809) AND THE NORTH LINE OF SAID SECTION 35; THENCE WEST ALONG THE NORTH BOUNDARY LINE OF SAID SECTION 35, A DISTANCE OF 400.00 FEET TO A POINT; THENCE SOUTH PARALLEL TO THE WEST BOUNDARY OF SAID MILITARY TRAIL 400.00 FEET TO A POINT; THENCE EAST PARALLEL TO THE NORTH BOUNDARY LINE OF SAID SECTION 35, A DISTANCE OF 400.00 FEET TO A POINT ON THE WEST BOUNDARY LINE OF SAID MILITARY TRAIL; THENCE NORTH ALONG SAID WEST BOUNDARY LINE OF SAID MILITARY TRAIL, A DISTANCE OF 400.00 FEET TO THE PLACE OF BEGINNING; LESS THE SOUTH 55.00 FEET THEREOF:

ALSO:

THE WEST 49.00 FEET OF THE EAST 137.72 FEET OF THE NORTH 15.00 FEET OF THE SOUTH 55.00 FEET OF THE FOLLOWING DESCRIBED PROPERTY: COMMENCING AT THE POINT OF INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF MILITARY TRAIL (STATE ROAD 809) AND THE NORTH LINE OF SAID SECTION 35; THENCE WEST ALONG THE NORTH BOUNDARY LINE OF SAID SECTION 35, A DISTANCE OF 400.00 FEET TO A POINT; THENCE SOUTH PARALLEL TO THE WEST BOUNDARY OF SAID MILITARY TRAIL 400.00 FEET TO A POINT; THENCE EAST PARALLEL TO THE NORTH BOUNDARY LINE OF SAID SECTION 35, A DISTANCE OF 400.00 FEET TO A POINT ON THE WEST BOUNDARY LINE OF SAID MILITARY TRAIL; THENCE NORTH ALONG SAID WEST BOUNDARY LINE OF SAID MILITARY TRAIL, A DISTANCE OF 400.00 FEET TO THE PLACE OF BEGINNING.

LESS: THE EASTERLY 42.50 FEET FOR ROAD RIGHT-OF-WAY; LESS NORTH 45.00 FEET FOR CANAL RIGHT-OF-WAY AS PER DEED BOOK 6792, PAGE 1485.

EXHIBIT B

VICINITY SKETCH

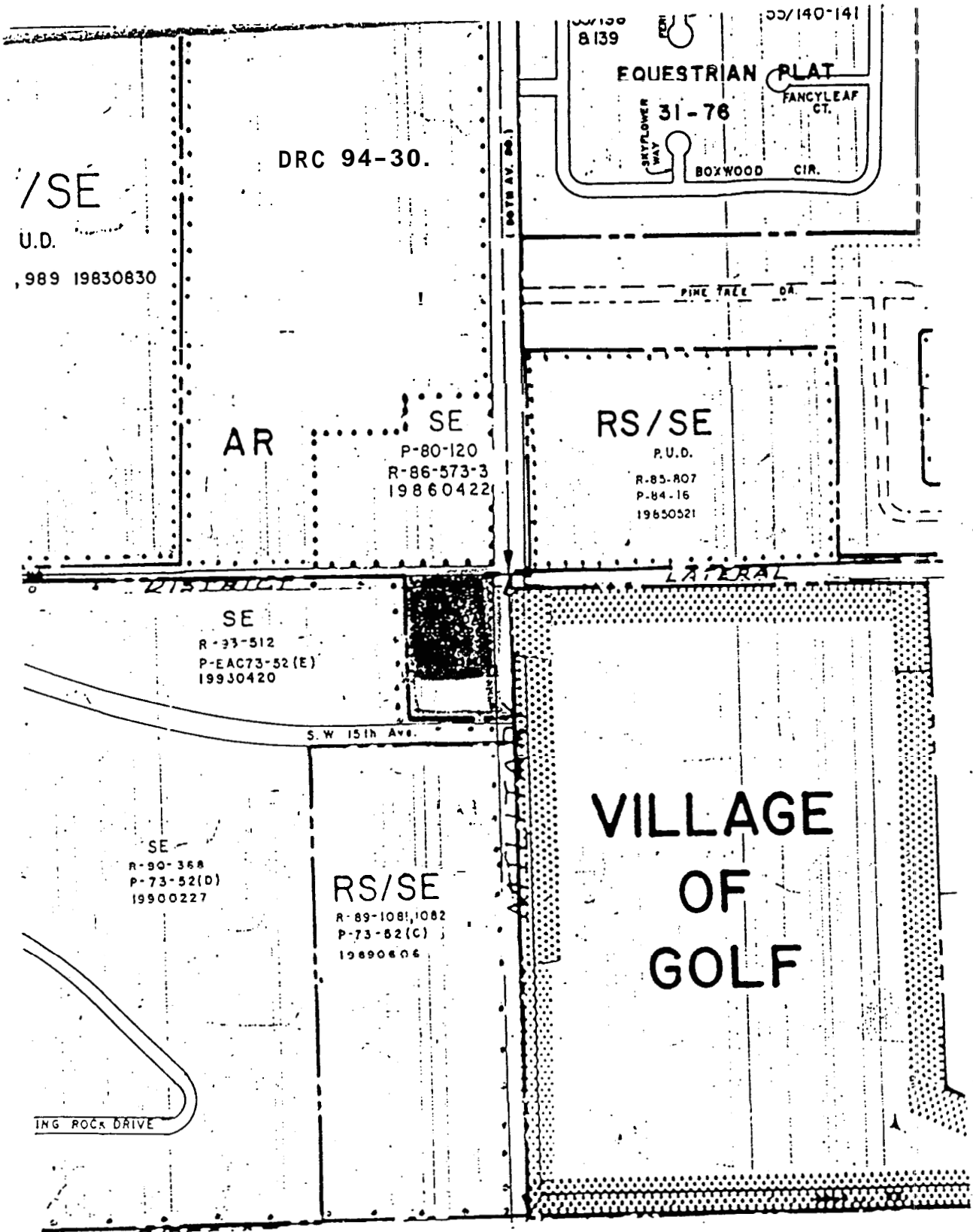


EXHIBIT C

CONDITIONS OF APPROVAL

NOTE: All previous conditions of approval are shown in **BOLD** and will be carried forward with this petition unless expressly modified.

A. STANDARD CONDITIONS

1. **The petitioner shall comply with all previous conditions of approval, unless expressly modified herein.** (ONGOING: MONITORING - Zoning) (Previously Condition A.1 of Resolution No.R-91-375, Petition 81-20(A).
2. **The site plan shall be amended to indicate compliance with all minimum property development regulations and land development requirements.** (DRC: ZONING) (Previously Condition A.2 of Resolution No.R-91-375, Petition 81-20(A).
3. **Development of the site is limited to the uses and site design shown on the site plan approved by the Board of County Commissioners. Any modifications must be approved by the Board of County Commissioners unless the proposed use or design changes are permitted pursuant to Section 402.7(E)2(b) (Site Plan Review Committee Powers and Standards of Review).** (ONGOING: ZONING) (Previously Condition A.3 of Resolution No.R-91-375, Petition 81-20(A).
4. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-91-375 (Petition 81-20(A)), and R-81-460 (Petition 81-20), have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING-Zoning)

B. SITE DESIGN

1. **All garbage and refuse receptacles shall be confined to a designated area. Dumpsters or other trash collection devices shall be concealed behind an enclosure having an architectural treatment compatible with the principal building. The open end of the enclosure shall have an obscure, opaque gate.** (CO: BLDG - Zoning) (Previously Condition B.1 of Resolution No.R-91-375, Petition 81-20(A).
2. **Prior to site plan certification, the site plan shall be amended to reflect the following:**
 - a. **Elimination of two (2) parking stalls, and**
 - b. **Provision for a fifteen (15) foot landscape strip along Military Trail.** (DRC: ZONING) (Previously Condition A.4 of Resolution No.R-91-375, Petition 81-20(A).
3. Prior to site plan certification by the Development Review Committee (DRC), the petitioner shall record a cross access agreement from the subject property to the north to the adjacent property to the south in a form acceptable to the County Attorney. (DRC: CO ATTORNEY)

C. CO-LOCATION

1. Palm Beach County shall have the right to co-locate County communication equipment on the subject tower provided that the placement of County equipment does not interfere with the petitioner's equipment or operations. (PREM - Zoning) (Previously Condition A.5 of Resolution No.R-91-375, Petition 81-20(A).

D. HEALTH

1. Generation and disposal of hazardous effluents into sanitary sewerage system shall be prohibited unless adequate pretreatment facilities approved by the Florida Department of Environmental Regulation (FDER) and Agency responsible for sewage works are constructed and used by project tenants or owners generating such effluents. (ONGOING: HEALTH / CODE ENF) (Previously Condition D.1 of Resolution No.R-91-375, Petition 81-20(A).
2. Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site. (ONGOING: HEALTH) (Previously Condition D.2 of Resolution No.R-91-375, Petition 81-20(A).
3. Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water. (ONGOING: HEALTH) (Previously Condition D.3 of Resolution No.R-91-375, Petition 81-20(A).
4. No portion of this project is to be approved on well and/or septic tank, existing or new. Existing septic tanks are to be abandoned in accordance with Chapter 10-D-6 Florida Administrative Code. (ONGOING: HEALTH) (Previously Condition D.1 of Resolution No.R-91-375, Petition 81-20(A).

E. ENGINEERING

1. Within ninety (90) days of Special Exception approval, petitioner shall convey to Palm Beach County 60' from centerline for the ultimate right of way for Military Trail. (DATE: ENG) (Previously Condition 1 of Resolution No. R-81-460, Petition 81-20).
2. The open area north of the 12 foot access drive shall be sodded and maintained. (ONGOING: BLDG - Eng) (Previously Condition 2 of Resolution No. R-81-460, Petition 81-20).
3. The Developer shall provide discharge control and treatment for the stormwater runoff in accordance with all applicable agency requirements in effect at the time of the permit application. However, at a minimum, this development shall retain onsite the stormwater runoff generated by a three (3) year-one (1) hour storm with a total rainfall of 3 inches as required by the Permit Section, Land Development Division. In the event that the subject site abuts a Department of Transportation maintained roadway, concurrent approval from the Florida Department of Transportation will also be required. The drainage system shall be maintained in an acceptable condition as approved by the County Engineer. In the event that the drainage system is not adequately maintained as determined by the County Engineer, this matter will be referred to the Code Enforcement Board for enforcement. (ENG / CODE ENF) (Previously Condition E.1 of Resolution No. R-91-375, Petition 81-20(A).

4. If required by the County Engineer, prior to June 1, 1991 or prior to the issuance of the first Building Permit, the Property owner shall convey to Palm Beach County adequate road drainage tract through the project's internal surface water management system to provide legal positive outfall for all runoff from those segments of Military Trail along the property frontage and for a maximum 400 ft. distance each side of the property boundary lines along Military Trail. Said easements shall be no less than 20 feet in width. The drainage system within the project shall have sufficient retention/detention capacity to meet the storm water discharge and treatment requirements of the applicable County Water Control District and South Florida Water Management for the combined runoff from the project and District the ultimate Thoroughfare Plan Road Section(s) of the included segment. If required by the County Engineer the property owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures. Elevations of all construction shall be approved by the County Engineer. (DATE / BLDG PERMIT: BLDG / ENG) (Previously Condition E.2 of Resolution No. R-91-375, Petition 81-20 (A).
5. The property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project at the time of the Building Permit presently is \$5,720.00 (104 trips X \$55.00 per trip). (BLDG PERMIT: FAIR SHARE FEE COORDINATOR) (Previously Condition E.3 of Resolution No. R-91-375, Petition 81-20 (A).
6. Prior to June 1, 1991, the property owner shall convey to the Lake Worth Drainage District the North 45 feet of the subject property the required right-of-way for Lateral Canal No. 26. (DATE: MONITORING /ENG) (Previously Condition E.4 of Resolution No. R-91-375, Petition 81-20 (A).
7. Prior to June 15, 1997, the property owner shall convey to Palm Beach County Land Development Division by road right-of-way warranty deed for Military Trail, seventy six feet from centerline. This right of way conveyance shall be in accordance with PBC typical expanded intersection requirement, and shall be free of all encumbrances and encroachments. The Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section. to ensure that the property is free of all encumbrances and encroachments. (DATE/BLDG. PERMIT: MONITORING/Eng.

F. LANDSCAPE

1. The petitioner shall install along the entire east property line adjacent to Military Trail, in the required fifteen (15) foot landscape strip, a continuous opaque hedge thirty six (36) inches high and twelve (12) foot tall native canopy trees spaced no more than twenty (20) feet on center. (DRC: LANDSCAPE -Zoning) (Previously Condition E.1 of Resolution No. R-91-375, Petition 81-20 (A).

2. The petitioner shall install a thirty-six (36) inch high continuous opaque hedge and ten (10) foot tall native canopy trees, spaced no more than twenty (20) feet on center, on the exterior side of a six (6) foot high opaque wooden fence on the north, south and west perimeters of the tower, equipment building and vehicle circulation area. (DRC:LANDSCAPE - Zoning) (Previously Condition E.1 of Resolution No.R-91-375, Petition 81-20 (A)).

G. LIGHTING

1. Outdoor lighting used to illuminate the premises shall be low intensity, shielded and directed away from adjacent properties and streets. (ONGOING: BLDG / CODE ENR - Zoning) (Previously Condition F.1 of Resolution No.R-91-375, Petition 81-20 (A)).

H. RECYCLE SOLID WASTE

1. The property owner shall participate in a recycling program when available in the area. The program shall include paper, plastic, metal and glass products, as programs are available. (ONGOING: HEALTH / SWA) (Previously Condition G.1 of Resolution No.R-91-375, Petition 81-20(A)).

I. SIGN

1. Signs fronting on Military Trail shall be limited as follows:
 - a. Maximum sign height - fifteen (15) feet.
 - b. Maximum total sign face area - 200 square feet.
 - c. Maximum number of signs - one (1). (Previously Condition H.1 of Resolution No.R-91-375, Petition 81-20(A)).
2. No off-premise signs shall be permitted on site. (Previously Condition H.2 of Resolution No.R-91-375, Petition 81-20 (A)).
3. If, prior to the issuance of a building permit for the project, the Sign Code is amended to be more restrictive than the conditions of approval, the regulations of the amended Sign Code shall supersede the sign-related conditions of approval. (CO:BLDG) (Previously Condition H.3 of Resolution No.R-91-375, Petition 81-20(A)).

J. VEGETATION PROTECTION

1. All prohibited species, including Australian pine, melaleuca, Brazilian pepper and acacia (Earleaf), shall be removed from the entire site. (ONGOING:LANDSCAPE - Zoning) (Previously Condition 1.1 of Resolution No.R-91-375, Petition 81-20(A)).
2. The applicant shall submit prior to site plan certification:
 - a. An eradication program that specifies the planting program for any required landscaping and the time frames and methods of removal of the prohibited species, as well as treatment of the disturbed areas to prevent the re-establishment of prohibited species.

- b. A management plan that includes the monitoring of the treated areas from re-establishment of the prohibited species.
- c. The eradication program and the management plan shall be submitted to the Zoning Division and Environmental Resources Management for review and approval prior to Site Plan Certification.
- d. The applicant shall preserve and protect the existing mature native slash pines on site. The site plan shall be modified to reflect the specific location and diameter of each tree. (CRC: LANDSCAPE - Zoning) (Previously Condition I.2 of Resolution No.R-91-375, Petition 81-20(A).

K. COMPLIANCE

Condition J.1 of Resolution No.R-91-375, Petition 81-20(A), which states:

- 1. As provided in the Palm Beach County Zoning Code, Sections 400.2 and 402.6, failure to comply with any of these conditions of approval at any time may result in:
 - a. The denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property; and/or
 - b. The revocation of the Special Exception and any zoning which was approved concurrently with the Special Exception as well as any previously granted certifications of concurrency or exemptions therefrom; and/or
 - c. A requirement of the development to conform with updated standards of development, applicable at the time of the finding of noncompliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions.

Is hereby amended to state:

- 1. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
 - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; and/or
 - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

- c. A requirement of the development to conform with the standards **of** the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
- d. Referral to code enforcement; and/or
- e. Imposition **of** entitlement density or intensity.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit.
(MONITORING)