

RESOLUTION NO. R-2008- 1132

RESOLUTION APPROVING ZONING APPLICATION PDD-2007-00728
(CONTROL NO. 2007-00236)
OFFICIAL ZONING MAP AMENDMENT
TO A PLANNED DEVELOPMENT DISTRICT (PDD)
APPLICATION OF TIDAL WAVE DEVELOPMENT CORP, TIDAL WAVE
MANAGEMENT CORP INC
BY KILDAY & ASSOCIATES, INC., AGENT
(TIDAL WAVE INDUSTRIAL PARK)

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, as amended, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) have been satisfied; and

WHEREAS, Zoning Application PDD-2007-00728 was presented to the Board of County Commissioners at a public hearing conducted on June 30, 2008; and

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

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners has considered the findings in the staff report and the following findings of fact:

1. This official zoning map amendment (rezoning) is consistent with the Palm Beach County Comprehensive Plan.
2. This official zoning map amendment (rezoning) is consistent with the stated purpose and intent and requirements of the Palm Beach County Unified Land Development Code. The rezoning request is also consistent with the requirements of all other applicable local land development regulations.
3. This official zoning map amendment (rezoning) is compatible and generally consistent with existing uses and zones surrounding the subject land, and is the appropriate zoning district for the land.
4. This official zoning map amendment (rezoning) does not result in significantly adverse impacts on the natural environment, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
5. This official zoning map amendment (rezoning) will result in a logical, orderly and timely development pattern.
6. This official zoning map amendment is consistent with applicable Neighborhood Plans.
7. This official zoning map amendment (rezoning) complies with Article 2.F (Concurrency) of the Palm Beach County Unified Land Development Code.

8. The applicant has demonstrated that there are sufficient changed conditions or circumstances that require an amendment.

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) 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 Application PDD-2007-00728, the application of Tidal Wave Development Corp and Tidal Wave Management Corp Inc, by Kilday & Associates, Inc., agent, for an Official Zoning Map Amendment to a Planned Development District from the Agricultural Residential (AR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on June 30, 2008, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Aaronson moved for the approval of the Resolution.

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

Addie L. Greene, Chairperson	¥	Aye
Jeff Koons, Vice Chair	¥	Aye
Karen T. Marcus	¥	Absent
Robert J. Kanjian	¥	Aye
Mary McCarty	¥	Absent
Burt Aaronson	¥	Aye
Jess R. Santamaria	¥	Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on June 30, 2008.

Filed with the Clerk of the Board of County Commissioners on 7th day of July, 2008.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK




EXHIBIT A

LEGAL DESCRIPTION

Legal Description for Rezoning

Parcel 12 (179):

A parcel of land located and situate in Section 34, Township 43 South, Range 42 East, Palm Beach County, Florida, more particularly described as follows:

Beginning at the Northeast corner of Tract 69, Block 5, The Palm Beach Farms Co. Plat No. 3, according to the plat thereof, recorded in Plat Book 2, Page 45, Public Records of Palm Beach County, Florida, go South 00° 37' 01" East along the Eastern boundary of said Tract 69, a distance of 660 feet to the Southeast corner of said Tract 69; thence continue South 00° 37' 01" East along the Eastern boundary of Tract 72, of said Plat of The Palm Beach Farms Co. Plat No. 3, to the intersection of the Eastern boundary of said Tract 72 with the Northern Right-of-Way line of State Road 80 as established and laid out in Road Plat Book 2 Pages 11 through 18, inclusive; thence go North 88° 06' 55" West, along the Northern Right-of-Way line of State Road 80, a distance of 230.22 feet to a point; thence go North 00° 37' 01" West a distance of 310.06 feet, more or less; thence go South 89° 22' 59" West, a distance of 100.13 feet to a point on the West line of the East one-half of Tract 69; thence go North 00° 35' 57" West along the West line of the East one-half of Tract 69, a distance of 410.00 feet to a point on the North boundary line of said Tract 69; thence go North 89° 22' 59" East a distance of 330 feet to the POINT OF BEGINNING.

LESS and EXCEPTING that portion thereof for additional Right-of-Way for State Road 80 per the Order of Taking recorded in O.R. Book 13725, Page 1614, Public Records of Palm Beach County, Florida.

Parcel 14 (134):

The South 210 feet of Tract 53, Block 5, The Palm Beach Farms Co. Plat No. 3, according to the map or plat thereof as recorded in Plat Book 2, Pages 45 to 54, inclusive, Public Records of Palm Beach County, Florida, LESS the West 223 feet thereof and LESS the East 333 feet thereof, more particularly described as follows:

Beginning at the Southeast corner of said Tract 53; thence run West along the South line of said Tract 53, 333 feet to a POINT OF BEGINNING; thence North a distance of 210 feet; thence West a distance of 104 feet; thence South a distance of 210 feet; thence East a distance of 104 feet to the POINT OF BEGINNING.

Parcel 15 (135):

The South 210 feet of Tract 53, Block 5, The Palm Beach Farms Co. Plat No. 3, according to the map or plat thereof as recorded in Plat Book 2, Pages 45 to 54, inclusive, Public Records of Palm Beach County, Florida, LESS the West 327 feet thereof and LESS the East 229 feet thereof, more particularly described as follows:

Beginning at the Southeast corner of said Tract 53; thence run West along the South line of said Tract 53, 229 feet to a POINT OF BEGINNING; thence North a distance of 210 feet; thence West a distance of 104 feet; thence South a distance of 210 feet; thence East a distance of 104 feet to the POINT OF BEGINNING.

Parcel 16 (182):

The South 250 feet of the West 100 feet of the East 1/2 of Tract 69, Block 5, The Palm Beach Farms Co. Plat No. 3 and a parcel in Tract 72, Block 5, The Palm Beach Farms Co. Plat No. 3, according to the map or plat thereof recorded in Plat Book 2, Pages 45 to 54,

inclusive, Public Records of Palm Beach County, Florida, the point of beginning, being 330 feet East of the Northwest corner of said Tract;

LESS and EXCEPTING that portion thereof for additional Right-of-way for state road 80 per the order of taking recorded in O.R Book 13789 Page 1849, Public Records of Palm Beach County, Florida.

EXHIBIT B
VICINITY SKETCH

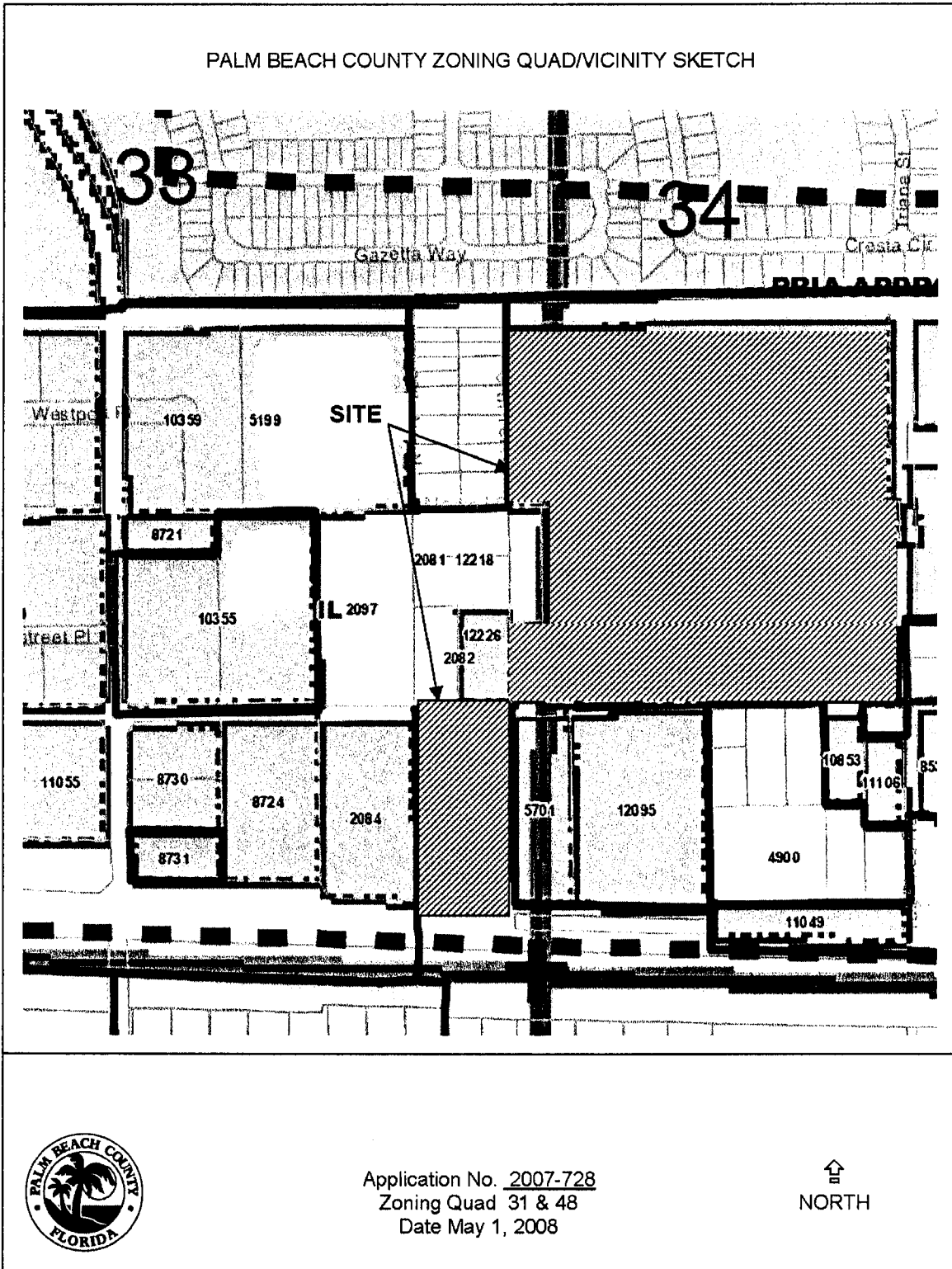


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the site design as approved by the Board of County Commissioners. The approved preliminary site plan is dated February 25, 2008. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING - Zoning.)

ARCHITECTURAL REVIEW

1. At time of submittal for final approval by the Development Review Officer (DRO), the architectural elevations for all buildings shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:
 - a) No Building Permits for the site may be issued after December 31, 2009. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)
2. CORRIDOR CONVEYANCE OF ROAD RIGHT OF WAY

The property owner shall provide to the Palm Beach County Land Development Division a road right of way deed and all associated documents as required by the County Engineer for:

- Wallis Road 40 feet from centerline
- North/south 80 feet in width from Southern Boulevard to Wallis Road as shown on the applicant's accompanying site plan

All right of way deed(s) and associated documents shall be provided and approved prior to June 1, 2009 or prior to the issuance of a Building Permit whichever shall first occur.

Right of way conveyance shall be along the entire frontage and shall be free of all encroachments and encumbrances. 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.

The Grantor further warrants that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, Engineering or other expert witness fees including Attorney's fees as well as the actual cost of the clean up. Thoroughfare Plan Road right-of-way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate provisions for Expanded Intersection Details and "Corner Clips."

The Property Owner shall not record these required deeds or related documents.

After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (DATE/BLDG. PERMIT: MONITORING-Eng)

3. The Property owner shall construct:
 - left turn lane east approach on Wallis Road at Tall Pines Road the North /south entrance road from Southern Boulevard to Wallis Road. This road shall be constructed to 2-lane collector roadway standards, including 2 - 5 foot pedestrian sidewalks.
 - Wallis Road as a 3 lane section built to collector roadway standards including a 5 foot pedestrian side walks from Tall Pines Road to the projects west property line
 - Tall Pines Road as a 3 lane section from Wallis Road to the project's southern entrance
 - separate turn lanes (exclusive right and shared through/left, or as approved by the County Engineer) on the west approach of Wallis Rd/Jog Rd intersection.

All construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way and appropriate drainage.

- a. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)
 - b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)
4. Landscape Within the Median of Southern Boulevard
 - a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Southern Boulevard. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph D below. (ONGOING: ENGINEERING-Eng)
 - b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)
 - c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)
 - d. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. ((ONGOING: ENGINEERING-Eng)
 - e. Alternately, at the option of the Property Owner, and prior to the issuance of a Building Permit, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification

program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Southern Boulevard. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. ((ONGOING: ENG-Eng)

5. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at Wallis Rd/Jog Rd intersection. Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and required utility relocation and right of way or easement acquisition.
No Building Permits shall be issued until the developer provides acceptable surety in the form of cash bond or escrow agreement to the Traffic Division in an amount as determined by the Director of Traffic Division. (BLDG PERMIT: MONITORING-Eng).
6. In order to be relieved from the signal condition above and have surety returned for the traffic signal work, the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at Wallis Rd/Jog Rd intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the surety to construct the traffic signal or release the surety. (ONGOING: ENG-Eng)

ENVIRONMENTAL

1. All existing native vegetation, including understory, depicted on the site plan to remain shall be maintained in perpetuity. Areas where existing native vegetation have been incorporated into the site plan shall be maintained free from invasive, exotic and non-native species. (ONGOING: ERM-ERM)

HEALTH

1. The property owners and operators of facilities generating industrial, hazardous, or toxic waste shall not deposit or cause to be deposited any such waste into the sanitary sewer system unless adequate pretreatment facilities approved by the Florida Department of Environmental Protection, the Palm Beach County Health Department, and the agency responsible for sewage works are provided and used. (ONGOING: CODE ENF.-Health)

LANDSCAPING-STANDARD

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with the conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)
2. Fifty (50) percent of canopy trees to be planted in the perimeter landscape buffer along Southern Boulevard shall be native and meet the following minimum standards at installation:
 - a. Tree height: Fourteen (14) feet;
 - b. Trunk diameter: three and one-half (3.5) inches measured at four and one-half (4.5) feet above grade;
 - c. Canopy diameter: Seven (7) feet diameter shall be determined by the average canopy radius measured at three (3) points from the trunk to the outermost branch tip. Each radius shall measure a minimum of three and one-half (3.5) feet in length; and
 - d. Credit may be given for existing or relocated trees provided they meet ULDC requirements. (DRO: LANDSCAPE - Zoning)

3. Fifty (50) percent of palms required to be planted on the property by this approval shall meet the following minimum standards at installation:
 - a. palm heights: twelve (12) feet clear trunk;
 - b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
 - c. credit may be given for existing or relocated palms provided they meet current ULDC requirements. (DRO: LANDSCAPE - Zoning)
4. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPING ALONG THE SOUTH PROPERTY LINE (ABUTTING SOUTHERN BOULEVARD)

5. In addition to the ULDC requirements, landscaping and buffering along Southern Boulevard shall be upgraded to include:
 - a. one (1) palm for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters. (DRO: LANDSCAPE - Zoning)

PALM TRAN

1. The location of an easement for a Bus Stop Boarding and Alighting Area, subject to the approval of Palm Tran shall be shown on the Master Plan and/or site plan prior to final approval of the Development Review Officer (DRO). The purpose of this easement is for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (DRO: PALM TRAN-Palm Tran)
2. Prior to Plat Recordation, the property owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents, as deemed necessary by Palm Tran is required. (PLAT: ENG-PalmTran)

UTILITIES

1. If any relocation/modifications to the County's existing facilities are required that are direct or indirect result of the development, the developer shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: PBCWUD-PBCWUD)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Zoning Commission for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)
2. 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; revocation of any concurrency; 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.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Conditional Use, Type II Variance, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Departmental administrative actions made pursuant to this condition may be appealed as provided in the Unified Land Development Code (ULDC), as amended.

Appeals of any revocation of a Conditional Use, Type II Variance, Development Order Amendment or other actions based on a Zoning Commission decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)

This resolution will become effective when filed with the Clerk of the Board of County Commissioners.