

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

WHEREAS, Lee County Port Authority, represented by Southwest Florida Pipeline Company, in reference to Fort Myers Petroleum Storage Terminal, has properly filed an application for consideration of the Application for Development Approval for a Development of Regional Impact known as the Fort Myers Petroleum Storage Terminal, State DRI No. 12-9091-110; and

WHEREAS, the subject property is located on the west side of Fuel Farm Road, described more particularly as:

LEGAL DESCRIPTION: A parcel or parcels lying in Section 19, Township 45 South, Range 26 East, Township 45 South, Range 26 East, Lee County, Florida:

A tract or parcel of land lying in the Northeast Quarter (NE1/4) of Section 19, Township 45 South, Range 26 East, Lee County, Florida which tract or parcel is described as follows:

From the concrete post marking the Northeast corner of said Northeast Quarter (NE1/4) of Section 19 having Airport Grid Coordinates of 13,025.404 North, 21,431.175 East run S69°09'32"W for 1,224.91 feet to a 3/4" pipe with cap (LB 642) in a fence line marking the Westerly limits of the existing constructed Fuel Farm Road having Airport Grid Coordinates 12,589.608 North, 20,286.406 East and the POINT OF BEGINNING.

From said POINT OF BEGINNING run N90°00'00"W for 238.55 feet;

THENCE run S45°00'00"W for 188.47 feet;

THENCE run S00°01'14"E for 580.21 feet;

THENCE run S89°58'46"W for 318.35 feet;

THENCE run S00°04'29"W for 18.00 feet;

THENCE run N90°00'00"W for 649.73 feet;

THENCE run N00°00'00"E for 328.97 feet;

THENCE run N65°00'14"E for 39.49 feet;

THENCE run N00°00'00"E for 163.49 feet;

THENCE run N90°00'00"W for 429.47 feet to an intersection with a line 58.00 feet Easterly from (as measured on a perpendicular) and parallel with the Easterly top of bank of an existing retention pond;

THENCE run N00°00'00"E along said parallel line for 680.50 feet;

THENCE run N90°00'00"E for 591.25 feet;

THENCE run S44°32'37"E for 318.40 feet;

THENCE run S66°01'37"E for 138.13 feet;

THENCE run N90°00'00"E for 792.62 feet to a 3/4 inch pipe with cap (LB 642) in a fence line marking the Westerly limits of the existing constructed Fuel Farm Road;

THENCE run S00°00'36"W along said fence line for 175.00 feet to the POINT OF BEGINNING.

CONTAINING 29.95 acres, more or less.

SUBJECT TO easements, restrictions and reservations of record.

Bearings and coordinates hereinabove mentioned are Airport Grid for the Southwest Florida Regional Airport based on ties to Airport Control Monuments D-3 and D-4.

continued...

EXPANSION AREA - DESCRIPTION OF RIGHT OF FIRST REFUSAL PARCELS

Tracts or parcels of land lying in the Northeast Quarter (NE1/4) of Section 19, Township 45 South, Range 26 East, Lee County, Florida which tract or parcel is described as follows:

From the concrete post marking the Northeast corner of said Northeast Quarter (NE1/4) of said Section 19 having Airport Grid Coordinates of 13,025.404 North, 21,431.175 East, run S77°09'57"W for 1,174.07 feet to a 3/4 inch pipe with cap (LB 642) in a fence line marking the Westerly limits of the existing constructed Fuel Farm Road having Airport Grid Coordinates 12,764.608 North, 20,286.436 East and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S90°00'00"W for 792.62 feet;
THENCE run N66°01'37"W for 138.13 feet;
THENCE run N44°32'37"W for 318.40 feet;
THENCE run N90°00'00"W for 591.25 feet to an intersection with a line 58.00 feet Easterly from (as measured on a perpendicular), and parallel with the Easterly top of bank of an existing retention pond;
THENCE run N00°00'00"E along said parallel line for 402.67 feet;
THENCE run N89°46'38"E for 592.54 feet;
THENCE run S03°00'57"W for 70.57 feet to the Westerly limits of a preservation area;
THENCE run Southerly, Southeasterly, Easterly and Northeasterly along said preservation area the following courses and distances:
S10°35'14"W for 69.55 feet,
S13°58'04"E for 82.17 feet,
S11°35'43"E for 90.03 feet,
S25°05'55"E for 73.24 feet,
S48°57'58"E for 80.92 feet,
S53°23'02"E for 87.39 feet,
S42°54'20"E for 82.68 feet,
S59°02'47"E for 132.71 feet,
S69°16'33"E for 135.78 feet,
S85°53'52"E for 108.48 feet,
N87°42'12"E for 83.94 feet,
N65°15'24"E for 100.46 feet,
N59°52'00"E for 83.95 feet,
N51°58'31"E for 73.16 feet;
THENCE run N23°47'32"E for 14.80 feet;
THENCE run N50°13'35"E for 7.5 feet;
THENCE run N39°56'14"E for 29.11 feet;
THENCE run N71°32'40"E for 13.35 feet;
THENCE run N37°24'32"E for 45.31 feet;
THENCE run N70°16'17"E for 14.30 feet;
THENCE run N38°01'03"E for 43.38 feet;
THENCE run N53°57'07"E for 8.20 feet;
THENCE run N42°21'44"E for 49.80 feet;
THENCE run N34°11'43"E for 48.61 feet;
THENCE run N26°32'41"E for 44.94 feet;
THENCE run N39°19'52"E for 76.16 feet to a 3/4 inch pipe in a fence line marking the Westerly limits of the existing constructed Fuel Farm Road;
THENCE run S00°00'36"W along said fence line for 458.51 feet to the POINT OF BEGINNING.

AND

From the hereinabove described POINT OF BEGINNING run S00°00'36"W along said fence line for 1,369.20 feet to a nail in a fence post on the Westerly limits of the existing constructed Fuel Farm Road having Airport Grid Coordinates 11,395.405 North, 20,286.196 East and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S89°53'17"W for 1,469.38 feet;
THENCE run N00°18'23"W for 241.62 feet;

continued...

THENCE run S89°59'07"W for 262.51 feet to an intersection with a line 58.00 feet Easterly from (as measured on a perpendicular) and parallel with the Easterly top of bank of said existing retention pond;
THENCE run N00°00'00"E along said parallel line for 733.08 feet;
THENCE run N90°00'00"E for 429.47 feet;
THENCE run S00°00'00"E for 163.49 feet;
THENCE run S65°00'14"W for 39.49 feet;
THENCE run S00°00'00"E for 328.97 feet;
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THENCE run S00°00'36"W along said fence line for 1,194.20 feet to the POINT OF BEGINNING.

CONTAINING 36.64 acres, more or less.

SUBJECT TO easements, restrictions and reservations of record.

Bearings and coordinates hereinabove mentioned are Airport Grid for the Southwest Florida Regional Airport based on ties to Airport Control Monuments D-3 and D-4.

WHEREAS, the applicant has indicated the property's current STRAP number is 19-45-26-00-00002.0000; and

WHEREAS, proper authorization has been given to Pavese, Garner, Haverfield, Dalton, Harrison & Jensen, by Southwest Florida Pipeline Company, the option holder for lease of property, to act as agent to pursue this application for development approval for a Development of Regional Impact; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available, and the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on December 3, 1991; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners, and in the legislative process, the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as the Fort Myers Petroleum Storage Terminal, State DRI No. 12-9091-110.

The application was filed by Southwest Florida Pipeline Company, 100 Gatz Drive, Tampa, Florida 33605.

Site Plan 91-110 is attached hereto and incorporated herein by reference.

The following findings of fact were made in conjunction with this approval of the proposed DRI Development Order:

- A. That the subject development is to be constructed and operated on lands that lie within a Lee Plan Future Land Use Map (FLUM) area designated as "Airport", and the development use as a commercial/industrial petroleum products storage and distribution terminal is consistent with the uses allowable and anticipated to arise within such a FLUM area.
- B. That the subject real estate is situated within a district currently designated by the Lee County Zoning Ordinance as Agricultural (AG-2), and which is in the process of being rezoned to Airport Operations Planned Development, which would allow such land use as contemplated by the proposed Development Order.
- C. That the use of the planned development will not be incompatible with existing or planned uses on abutting or near vicinity property, and will not cause nuisance, damage, hazard or other detriment to persons or property situated near the subject lands.
- D. That the draft Development Order for the Fort Myers Petroleum Storage Terminal DRI, a Development of Regional Impact, State DRI #12-9091-110, was properly developed, assembled and written, in accord with the requirements of Chapter 380, Florida Statutes, and the conditions and restrictions contained therein are reasonably related to the protection of the public interest from any possible adverse impacts anticipated to arise from the proposed development.
- E. That the development, as contemplated under the aforesaid Development Order, is compatible with the densities, intensities and general uses set forth in the Lee Plan, and after the zoning district designation of the subject property shall have been accomplished so as to re-zone same to a district permitting the desired use, the development shall be compatible with all applicable Lee County land development regulations.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner John E. Manning, and seconded by Commissioner Ray Judah and, upon being put to a vote, the result was as follows:

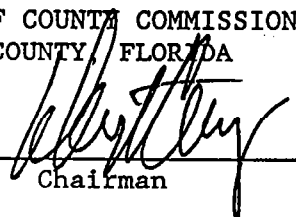
John E. Manning	<u>AYE</u>
Douglas R. St. Cerny	<u>AYE</u>
Ray Judah	<u>AYE</u>
Vicki Lopez-Wolfe	<u>ABSENT</u>
Donald D. Slisher	<u>ABSENT</u>

DULY PASSED AND ADOPTED this 3rd day of February, A.D., 1992.

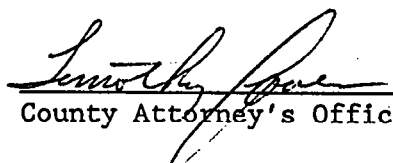
ATTEST: 
CHARLIE GREEN, CLERK

BY: Charles J. Green
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Chairman

Approved as to form by:


County Attorney's Office

FILED

FEB 18 1992

CLERK CIRCUIT COURT
BY Charles J. Green D.C.

DEVELOPMENT ORDER
FOR
THE "FORT MYERS PETROLEUM STORAGE TERMINAL DRI"
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #12-9091-110
COUNTY CASE #91-12-3-DRI-2

LET IT BE KNOWN, THAT PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AT A PUBLIC HEARING CONVENED ON THE THIRD DAY OF FEBRUARY, 1992, HEARD THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE FORT MYERS PETROLEUM STORAGE TERMINAL, A PETROLEUM STORAGE FACILITY IN LEE COUNTY, WHICH CONSISTS OF APPROXIMATELY 66.59 ACRES AT THE SOUTHWEST FLORIDA REGIONAL AIRPORT UNDER AN OPTION LEASE AGREEMENT WITH THE LEE COUNTY PORT AUTHORITY. DEVELOPMENT WILL BE IN ACCORDANCE WITH THE APPLICATION FOR DEVELOPMENT APPROVAL FILE ON DECEMBER 26, 1990 BY THE APPLICANT, SOUTHWEST FLORIDA PIPELINE COMPANY OF TAMPA, FLORIDA.

WHEREAS, the Board of County Commissioners of Lee County, Florida, has considered the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Staff, the Lee County Hearing Examiner, and the documents and comments upon the record made in public hearing, and after full consideration of said reports, recommendations, comments, and documents, the Board of County Commissioners of Lee County, Florida, hereby finds and determines that:

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The "Fort Myers Petroleum Storage Terminal DRI" site is located in central Lee County on 66.59 acres+/- at the Southwest Florida Regional Airport. The Lee County Port Authority has made the land available to the Developer under an option lease agreement with 30 acres+/- of land for the first phase of the terminal and an additional 36.6 acres+/- for future expansion. The project at buildout will total 16 petroleum storage tanks and one wastewater storage tank. Total capacity of the petroleum storage tanks will be 775,000 barrels. The petroleum products to be stored at the site include various grades of gasoline, diesel fuel and jet fuel. The site will have 14.80 acres of wetland preservation areas and is planned in three phases over a twenty-one year period with buildout in 2013.

B. The legal description of the leased site is as follows:

A tract or parcel of land lying in the Northeast Quarter (NE1/4) of Section 19, Township 45 South, Range 26 East, Lee County, Florida which tract or parcel is described as follows:

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SUBJECT TO easements, restrictions and reservations of
record.

Bearings and coordinates hereinabove mentioned are Air-
port Grid for the Southwest Florida Regional Airport
based on ties to Airport Control Monuments D-3 and D-4.

C. The subject parcel is currently zoned AG-2 (Agricultural district) with the AH (Airport Hazard district) as an overlay; concurrent with this Development Order, a zoning change to Airport Operations Planned Development is in process.

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

E. The development does not interfere with the achievement of the objectives of the adopted State Land Development Plan, which are applicable to the area.

F. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report drafted by their staff in September, 1991.

G. The conditions below meet the criteria found in Section 380.06(15), Florida Statutes.

H. The development is consistent with the Lee County Comprehensive Plan, as amended, and Lee County's land development regulations, if subject to the conditions contained in this Development Order.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

Now therefore be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting which was duly advertised, constituted and assembled the Third day of February 1992, that the Development of Regional Impact Application for Development Approval submitted by the Southwest Florida Pipeline Company, hereinafter referred to as "Developer" is hereby ordered approved subject to the following conditions, restrictions, and limitations:

A. DRAINAGE AND WATER QUALITY

1. The dikes surrounding the tank farm shall be designed and constructed to assure complete retention of both the 100 Year/3-Day Storm Event and the product fuel in accordance with the National Fire Protection Association Codes.

2. Pursuant to the requirements of the Florida Department of Environmental Regulation (FDER), no stormwater discharge from the storage tank area to the water retention area will be allowed unless it meets State Water Quality Standards. Discharge may only be through manual operation of control structures for each tank cell. The Developer shall completely retain the run-off from the storage tank area, within the storage tank dikes, until water levels in the surface water management system for the remainder of the site recede to a level at which the system can accommodate the storage tank area run-off.

3. A modification to the current Surface Water Management Permit for the Southwest Florida Regional Airport will be required prior to the construction of the proposed improvements. However, no modification to the airport's existing surface water management system will be required, as the surface water management system proposed for the petroleum storage terminal will be an independent system.

4. The South Florida Water Management District (SFWMD) shall require water quality monitoring as a condition of approval of the surface water management system.

5. The Developer shall comply with all applicable standards of the SFWMD in effect at the time of permit application, including all criteria applicable to the design of the water management system.

6. Best Management Practices, monitoring and maintenance of the surface water management system shall be implemented by the Developer in accordance with SFWMD guidelines.

7. The surface water management system for the project shall provide at least one-half inch of dry retention/detention.

8. The Developer shall participate in any area-wide watershed management program established by Lee County or SFWMD which directly benefits the project, under the same terms as other properties, in a manner consistent with Section 380.06(15)(e)(1), Florida Statutes.

B. EMERGENCY SPILL AND FIRE PROTECTION

1. The Developer shall submit an Emergency Contingency Plan to be reviewed and coordinated by the Lee County Division of Emergency Management. As a part of the review that Division shall consult with the Lee County Port Authority including units for fire and police, the Lee County Division of Water Resources, the Lee County Department of Community Development, the Lee County Department of Transportation and Engineering, the Southwest Florida Emergency Planning Committee and any other agency deemed appropriate. The plan shall provide comprehensive emergency planning and worker protection guidelines and include at a minimum: measures to ensure safety including project design, employee training, operating procedures, monitoring of operations and security; procedures for handling spills or releases of oil or hazardous materials including notification and coordination, containment devices and resources, and environmental cleanup; procedures for handling fires including notification and coordination, fire fighting resources, and fire suppression; and procedures for evacuation of employees and all individuals in the immediate vicinity including notification and coordination, transportation, medical care and training.

The procedures for human evacuation shall identify all impact areas and be consistent with the Superfund Amendments Reauthorization Act, Title III, and Florida Hazardous Materials Emergency Response and Community Right to Know Act of 1988. Title III applications must be updated annually and submitted to the Local Emergency Planning Committee in accord with Section 303 of the Act.

A Spill Control and Countermeasures Plan shall be established for the project in accord with Federal Regulations 40 CFR Part 112 and appropriate Federal Aviation Regulations and Advisory Circulars. The plan shall include design and operating information, the drainage system, prediction of spill potential and control measures.

The requirements above may be met through a single Emergency Contingency Plan or may be handled separately, as determined by the Developer and the Lee County Division of Emergency Management.

2. A containment boom shall be housed at the facility for use in case of a transportation related spill from trucks near or around surface water on the project.

3. All project roads around the dike area shall be installed to allow access to the entire facility including to the west side of the tank farm, prior to the opening of the facility (Exhibit A).

4. The Terminal in its entirety shall be designed, constructed, and operated in such a manner as to prevent accidental discharge of oil or hazardous materials on the site or onto adjoining property.

5. The Southwest Florida Pipeline Company shall provide the initial 3,000 gallons of foam needed for fire protection prior to operation of the facility.

6. The Developer shall coordinate with the Lee County Port Authority for approval to use water for emergency purposes from the retention pond immediately west of the site or to acquire water from the Westinghouse Gateway DRI system or other alternative source.

7. The Developer shall provide a fire protection system whereby foam can be supplied internally to the storage tanks in case of a fire.

8. The Developer shall demonstrate compliance with the Hazardous Materials Management Plan for the Southwest Florida Regional Airport.

C. WETLANDS AND VEGETATION AND WILDLIFE

1. The marsh area (south preservation area) and associated transition wet prairie areas shall be preserved with the exception of a minor encroachment in the wet prairie along the northeast and northwest side of the marsh (totaling 3.41 acres).

2. The Developer shall protect the viability of the preserved wetlands by maintaining or enhancing the existing hydrological regime through the proposed water management system.

3. The Developer shall provide at least two wildlife crossing signs to Lee County for the Department of Transportation and Engineering to post on Fuel Farm Road. Also, the Developer shall post a wildlife caution sign on the property in a location conspicuous to tanker trucks leaving the site.

4. Mitigation and monitoring plans shall be submitted for review to the Lee County Department of Community Development. The plans must be approved by Lee County, based upon comment by reviewing agencies including FDER, SFWMD, Florida Game and Freshwater Fish Commission and the U.S. Army Corps of Engineers, prior to issuance of a local Final Development Order. The plans shall include the following:

a. A detailed Wetland Mitigation Plan which addresses wetland impacts and which at a minimum includes locations and sizes of proposed mitigation areas, species to be planted, planting densities, details of the proposed hydrologic regime, and cross-sections showing the proposed elevations and water depths. The proposed mitigation plan shall also include a mitigation work schedule which details each specific mitigation task (e.g., grading to proper elevation, mulching, planting, regularly scheduled maintenance and monitoring, submittal of reports, and calendar dates for the start and completion of each task). The plan shall demonstrate that the minimum buffer zone and/or fencing requirements have been met consistent with the requirements of Lee County and SFWMD.

b. A Monitoring Plan for the proposed mitigation areas shall be submitted which includes, at a minimum, provisions for both quantitative and qualitative observations of wildlife and macroinvertebrate utilization, water level readings, panoramic photos which document the condition of the mitigation areas and an evaluation of the success of the mitigation effort. The monitoring program and reports shall be conducted at least annually for a minimum of five years.

c. An exotic and nuisance plant removal program shall be an ongoing component of the maintenance program and shall include the removal of any exotics within the leased area

of the south preserve marsh and the eradication of all exotic seed-bearing plants within the entire project area.

d. The Developer shall create three cypress ponds totaling 3.22 acres on the terminal site, and 1.9 acres of wetland mitigation shall be located off-site but on the Regional Airport property, in order to mitigate the filling of 3.41 acres of wet prairie. The 1.9 acres of off-site wetland mitigation shall be incorporated in the Southwest Florida Regional Airport mitigation plan for DRI #4-8990-103.

D. POLICE PROTECTION

1. The Lee County Port Authority Police and the Developer shall develop a detailed plan to ensure security which shall be reviewed and coordinated prior to local Final Development Order. At a minimum, the following commitments shall be included in the plan:

a. The terminal facility shall employ security measures during operation, including but not limited to fencing, lighting and locked gates.

b. With regard to tank trucks, access to the terminal facility shall be through a computer controlled entrance gate. The truck loading rack shall employ computer card readers. The computer shall check to ensure that each tank truck operator is authorized to enter, and to load, and shall check on the tank truck unit to ensure that a current leak test report is on file. The computer shall monitor, control and log the activities including times, products and amounts loaded, customers, driver, carrier and delivery points. Without proper documentation, access to the facility shall be denied and/or no petroleum product may be dispensed.

c. With regard to access to the facility by individuals other than tank truck operators, each person must be individually authorized and security personnel shall verify that authorization prior to entry. Security personnel shall be on duty 24-hours per day, 7-days per week.

d. The terminal shall be equipped with a video camera system which monitors the entrance gate, truck loading area and the facility in general.

e. A gate communication system shall be provided and connected to the terminal control center.

f. Control equipment for pumps shall be located at sites within the terminal facility accessible only to authorized personnel.

g. Lighting shall be provided for general illumination of the facility. Loading areas shall be well lighted to permit operator observation of all liquid transfer equipment.

2. Any changes to the security system after it has been established shall be reviewed and coordinated by the Lee County Port Authority Police.

E. SOLID WASTE MANAGEMENT

1. The Developer shall participate in any general programs instituted by Lee County or the franchise hauler which will lower volumes of solid waste generated. Also, the Developer shall independently seek to lower the rate of generation of solid waste on the site.

2. When operations dictate, the Developer shall dispose of any hazardous materials which may accumulate on the bottom of the storage tanks. Disposal methods shall be in accord with Federal, State and local regulations.

F. WASTEWATER MANAGEMENT

1. The Developer shall dispose of industrial wastewater and sludge in accord with Federal, State and local regulations and through an entity which has all necessary approvals for such services.

2. All water discharged from the storage tank facility containment area, operating areas, and from tank or pipe testing shall meet FDER discharge criteria for water quality. Water which is found not to meet the criteria shall be treated as appropriate and disposal shall be consistent with Federal, State and local regulations.

3. The Developer shall use reclaimed water for non-potable purposes, when such water is made available by the Lee County Port Authority. The Developer shall ensure that on-site ponds, wetlands, and the surface water management system are adequately buffered from possible contamination from the reclaimed water in accord with State and local regulations. Use of the reclaimed water shall occur within 180 days of availability.

4. As there is a likelihood that the wastewater treatment plant at the Southwest Florida Regional Airport will be phased out in favor of a regional wastewater treatment system for that portion of Lee County east of the Six Mile Cypress Slough, the Developer shall connect to a regional treatment facility once available.

G. WATER SUPPLY

1. The Developer shall obtain a Consumptive Use Permit for any proposed withdrawals of water from the site for irrigation or other non-potable uses, and for any proposed dewatering activities associated with the construction, if applicable.

2. For the purpose of potable water conservation, the Developer shall utilize low water use plumbing fixtures, self-closing and/or metered water faucets, and other water conserving devices. In addition, the Developer shall utilize xeriscape principles in the design and maintenance of the project's landscaping.

3. All construction plans and technical specifications for the potable and non-potable water distribution systems shall be reviewed and approved by the Lee County Department of Utilities and the Lee County Division of Development Review prior to local Final Development Order.

H. GENERAL CONSIDERATIONS

1. The development phasing schedule presented within the ADA and as adjusted to the effective date of the Development Order shall be incorporated as a condition of approval. If Development Order conditions and applicant commitments incorporated within the Development Order, ADA or sufficiency round responses to mitigate regional impacts are not carried out as indicated to the extent or in accord with the timing schedules specified, then the local government shall determine if a substantial deviation has occurred for the affected regional issue. If the local government, during the course of monitoring the development, can demonstrate that substantial changes in the conditions underlying the approval of the Development Order has occurred or that the Development Order was based on substantially inaccurate information provided by the developer, resulting in additional substantial regional impacts, then a substantial deviation determination shall be made by the local government.

2. Pursuant to Section 380.06(16), Florida Statutes, the Developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities if the Developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the Developer may enter into a capital contribution front-ending agreement to reimburse the Developer for voluntary contributions in excess of the fair share.

3. If it is determined prior to issuance of local Final Development Order through legislative or judicial action that the pipeline serving the Fort Myers Petroleum Storage Terminal is

subject to a DRI review process, then the local government shall determine if a substantial deviation has occurred.

4. All conditions adopted as a part of the DRI Development Order, as amended, for the Southwest Florida Regional Airport which are applicable to the subject property shall remain in effect until such time as that Development Order is amended to less out the geographic overlap with the Fort Myers Petroleum Storage Terminal DRI.

5. In order to provide a coordinated site plan review process for this project, the Lee County Division of Development Review will act to ensure compliance with the Development Standards Ordinance, the ADA and sufficiency responses, as well as various relevant conditions in this Development Order. Prior to the issuance of a local Final Development Order, the following conditions must be addressed: II.A.1.; II.A.2.; II.A.3.; II.A.4.; II.A.5.; II.A.6.; II.A.7.; II.B.1.; II.B.3.; II.B.4.; II.B.6.; II.B.7.; II.B.8.; II.C.1.; II.C.2.; II.C.3.; II.C.4.; II.D.1.; II.F.3.; II.G.1.; II.G.2.; II.G.3; and III.B. to the extent appropriate.

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

A. This Development Order shall constitute a Resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval, filed for The Fort Myers Petroleum Storage Terminal DRI.

B. All commitments and impact mitigating actions volunteered by the Developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:

1. The Fort Myers Petroleum Storage Terminal Application for Development Approval dated December 26, 1990.

2. The Fort Myers Petroleum Storage Terminal DRI Sufficiency Response dated April 26, 1991.

3. The Fort Myers Petroleum Storage Terminal DRI, Second Sufficiency Response dated June 28, 1991.

C. Transportation is not a regional issue for this project as established through the "Southwest Florida Pipeline Company Fort Myers Terminal Traffic Impact Statement," dated December 19, 1990.

D. This Development Order shall be binding upon the developer(s) and its assignees or successors in interest.

E. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the Developer and County may rely in future actions necessary to implement fully the final development contemplated by this Development Order.

F. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party hereto by an action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.

G. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

H. In the event that any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the Development Order which shall remain in full force and effect.

I. The approval granted by this Development Order is limited. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable Federal, State or local review and permitting procedures, except where otherwise specifically provided. Such approval shall also not obviate the duty of the Developer to comply with any County Ordinance or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.

J. Subsequent requests for local development permits shall not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:

1. A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or

2. An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board shall order a termination of all development activity in such area of the development affected by such substantial deviation or such expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

K. This project does not have significant transportation impacts and since it is a Development of Regional Impact it is therefore determined to be concurrent for the purposes of the Lee County Concurrency Management System for a five year period after the effective date of this Development Order.

L. Any request to extend the date of buildout of the development by five or more years shall be presumed to create a substantial deviation subject to further Development of Regional Impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. Section 380.06(19)(c), Florida Statutes, further provides that an extension of the date of buildout of a development of three years or more, but less than five is presumed not to create a substantial deviation. If the development has commenced significant physical development and is proceeding in good faith, an extension of the buildout date of less than three years shall not be presumed to be a substantial deviation. Extension of the buildout date shall be pursuant to subparagraph 380.06(19)(e)2, Florida Statutes (1990 Supp.).

M. The Administrative Director of the Lee County Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order.

N. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, or other regulations which have the effect of reducing the permitted intensity for a period of five years from the effective date of this Development Order, unless Lee County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

O. The Developer, or its successor(s) in title to the undeveloped portion of the subject property, shall submit a report annually to Lee County, the Southwest Florida Regional Planning Council, the State Land Planning Agency (the Florida Department of Community Affairs), and all affected permitting agencies. This report shall describe the state of development and compliance as of the date of submission, and shall further be consistent with the rules of the Florida Department of Community Affairs. The annual report shall include information contained in Exhibit B. of the SWFRPC regional assessment, as further modified or otherwise updated by the State Land Planning Agency. The first monitoring report shall be submitted not later than one year after the effective date of this Development Order, and further reporting shall be submitted not later than May 1st of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06(18) Florida Statutes, and the Developer shall so inform any successor in title to any undeveloped portion of the real property covered by this Development Order.

P. Termination. The right to develop subject to terms, general provisions, and conditions of this Development Order shall terminate in the year 2021. In the event the development fails to have commenced and substantially proceeded within three years of the effective date of this Development Order, development approval shall terminate. This date may be extended by Lee County on a finding of excusable delay, and no adverse impacts resulting from the delay, in any proposed development activity. The termination date of development rights granted by this Development Order shall not affect properly permitted and approved construction which is under way. The Developer shall continue to be bound by the terms, general provisions, and conditions of this Development Order.

Q. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, notice of its adoption shall be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Resolution approving and adopting this Development Order was offered by Commissioner Manning and seconded by Commissioner Judah and upon poll of the members present, the vote was as follows:


Commissioner Manning	<u>Aye</u>	-
Commissioner St. Cerny	<u>Aye</u>	-
Commissioner Judah	<u>Aye</u>	
Commissioner Lopez-Wolfe	<u>Absent</u>	
Commissioner Slisher	<u>Absent</u>	

DULY PASSED AND ADOPTED this Third day of February, 1992.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

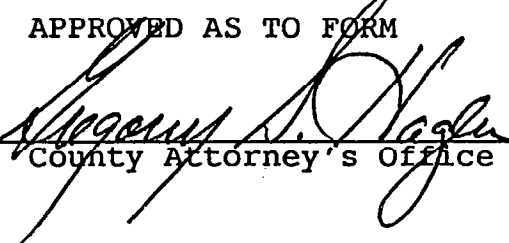
By: 
(Chairman)

ATTEST:

, Clerk

By: ,
Deputy Clerk

APPROVED AS TO FORM

By: 
County Attorney's Office

Charlie Green

**Clerk Of Circuit Court
Lee County, Florida**

State of Florida

County of Lee

I, Charlie Green, Clerk of the Circuit Court in and for said County and State do hereby certify that the foregoing is a true and photostatic copy of Development Order for the Fort Myers Petroleum Storage Terminal DRI, State DRI No. 12-9091-110, County Case No. 91-12-3-DRI-2, adopted by the Board of County Commissioners on February 3, 1992.

Given under my hand and official seal at Fort Myers, Florida, this 5th day of March, 1992.

CHARLIE GREEN, CLERK

BY Clare J. Wreck, D.C.