

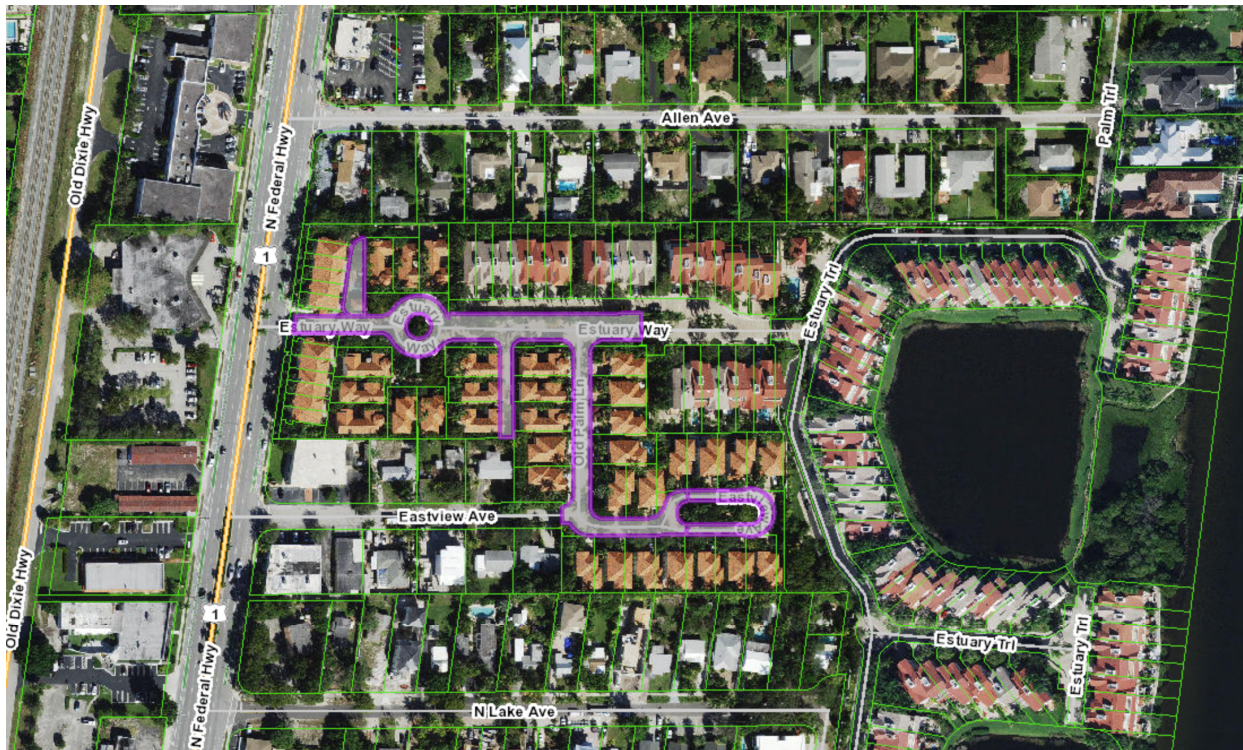


Old Palm Grove

Replat and Modification to Master Development Plan

Justification Statement

Old Palm Grove Homeowners' Association, Inc. ("Applicant") is the owner of the common areas located within the Old Palm Grove community ("OPG") that is generally located east of North Federal Highway/S.E. 6th Avenue along Estuary Way in the City of Delray Beach ("City"), Palm Beach County ("County"), Florida ("Property"). The Property was platted as the Old Palm Grove Plat and recorded in Plat Book 99, Pages 63 through 67 of the Official Records of Palm Beach County on July 1, 2003 ("Plat"). The Property is designated Medium Density Residential ("MD") on the City's Future Land Use Map and is zoned Planned Residential Development ("PRD") on the City's Zoning Map. Presently, the Property is primarily comprised of private streets and an alley that serve 33 single-family homes and 11 townhomes as well as a community pool and poolside bathrooms. As discussed in more detail below, the Applicant is now seeking to modify access to certain platted open space tracts within the Property.





Adjacent to the Subject Property are the following land uses and zoning districts:

	<u>Land Use Designation</u>	<u>Zoning District</u>
<u>North:</u>	TRN (Transitional) and LD (Low Density)	RM (Multifamily Medium Density Residential) and GC (General Commercial)
<u>South:</u>	MD (Medium Density)	RL (Multifamily Low Density Residential)
<u>East:</u>	MD (Medium Density)	RM (Multifamily Medium Density Residential) and RL (Multifamily Low Density Residential)
<u>West:</u>	GC (General Commercial)	GC (General Commercial)

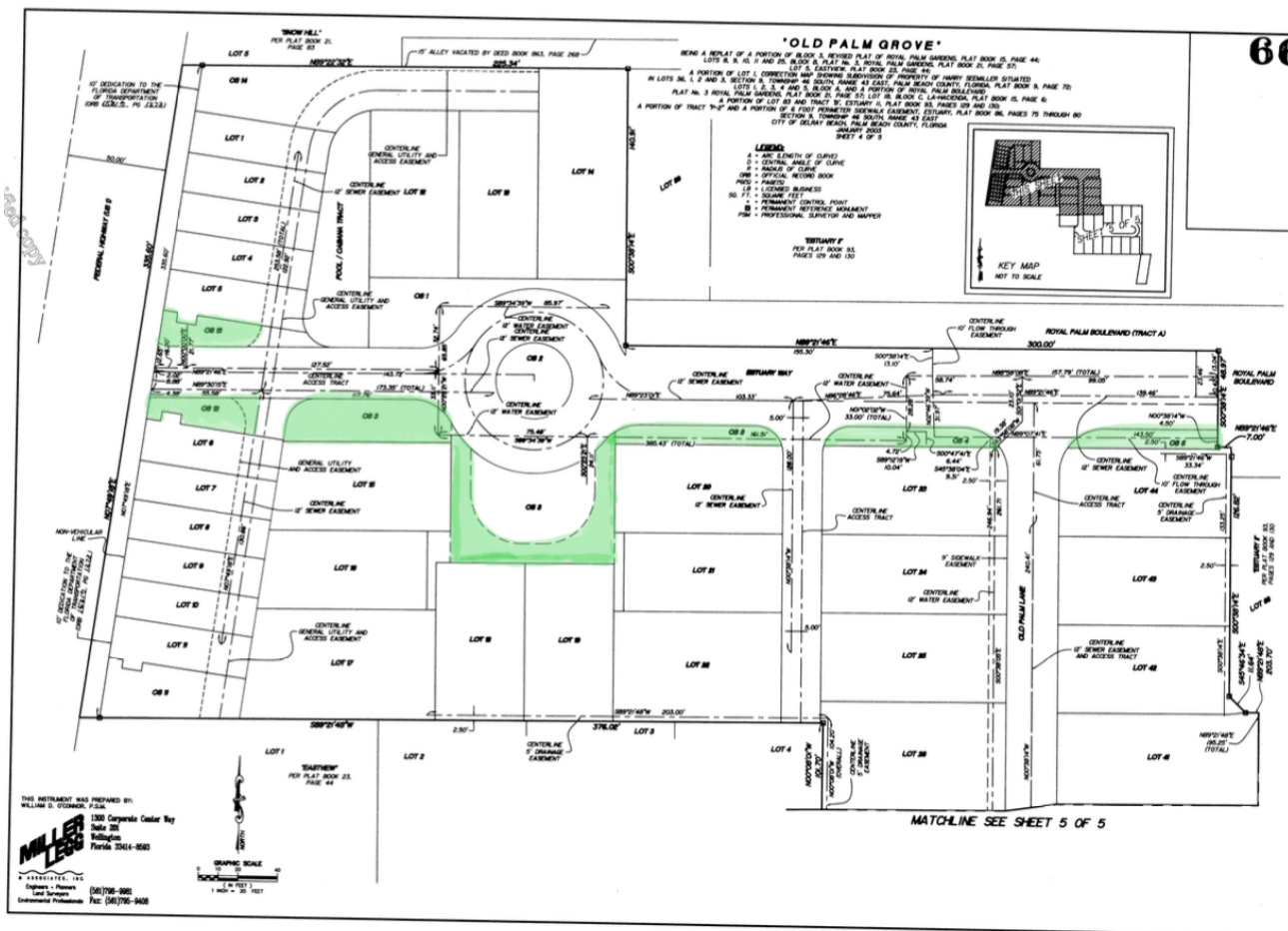
Property History

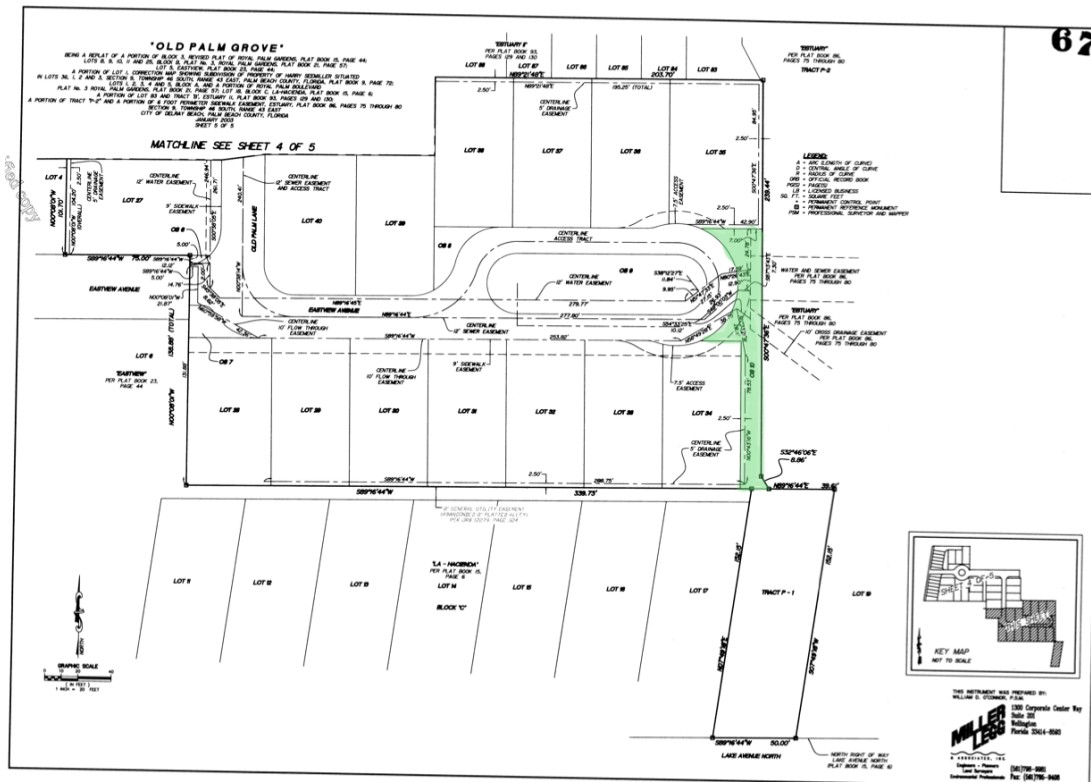
The Property was originally developed with a +/- 2,363 square foot restaurant that was constructed in 1968, two single family homes that were constructed in 1948 and 1950, and a landscape nursery. On February 19, 2002, the City Commission approved a Future Land Use Map Amendment for the restaurant portion of the Property and changed the land use designation from General Commercial (“GC”) to MD along with a rezoning from GC to PRD. The City Commission also approved a waiver to section 4.4.7(F)(2)(c) of the City’s Land Development Regulations (“LDRs”) to allow a total development area of +/- 4.62 acres rather than the required minimum site area of 5 acres for a PRD development. Subsequently, on May 20, 2002, the Planning and Zoning Board approved a master development plan for OPG, a forty-four (44) lot subdivision containing thirty-three (33) single family homes [thirty (30) single family zero lot line homes and three (3) conventional homes] and eleven (11) townhomes (“Master Development Plan”). The Planning and Zoning Board also granted relief in the form of internal adjustments for reductions in required setbacks and common open space as well as waivers for reductions in required lot area, width, frontage, and depth; pavement width; and site visibility triangle requirements as well as a waiver to provide a sidewalk on only one side of the street.

On April 15, 2003, the City Commission approved the Plat, which included the dedication of certain tracts for public use. More specifically, the Plat dedicated tract P-1 to the City of Delray Beach for park and recreation purposes. Tract P-1 is now La Hacienda Gardens, which is open to the public and is directly accessible from North Federal Highway and the communities to the south via North Lake Avenue. The Plat also dedicated open space tracts to the Applicant with the right of the public to access and utilize some of those open space tracts for pedestrian only ingress and



egress. In the illustration below, the public was granted the rights of pedestrian ingress and egress to specific open spaces tracts: OS 3, OS 4, OS 5, OS 10, OS 12, and OS 13 (highlighted in green).





The Plat also dedicated the following access tracts for pedestrian and vehicular ingress and egress: Estuary Way, Old Palm Lane, and Eastview Avenue.

It should be noted that open space tracts OS 3, OS 4, OS 5, OS 12, and OS 13 provide for east-west public pedestrian ingress and egress from North Federal Highway along the south side of Estuary Way to the gate of the Estuary community to the east of OPG. There is no right of general public access through the Estuary community. However, a private easement agreement between the Applicant and the Delray Estuary Homeowner's Association ensures the rights of vehicular and pedestrian ingress and egress through OPG from North Federal Highway to the Estuary residents and their guests. Open space tract OS 10 provides for north-south public pedestrian ingress and egress from La Hacienda Gardens along the eastern property line of OPG terminating at the eastern edge of Eastview Avenue. As such, the grant of pedestrian ingress and egress rights on the Plat does not provide for public access from the open space areas along Estuary Way to the open space area at the southeastern edge of the community; and the public does not currently enjoy rights of pedestrian egress through OPG to La Hacienda Gardens. The grant of public pedestrian ingress and egress rights was very limited and specific.



Old Palm Grove: Replat and Modification to Master Development Plan

For the last twenty (20 years), a historical police report has revealed that OPG experienced types of criminal activity that are inviting when public access is available, including but not limited to:

<u>Date</u>	<u>Crime</u>
3-20-2021	Burglary Vehicle
2-28-2021	Vandalism
11-6-2020	Larceny
9-13-2020	Stolen Vehicle
5-11-2018	Stolen Vehicle
1-12-2018	Burglary Vehicle
8-9-2017	Vandalism
7-26-2017	Burglary Vehicle
2-22-2017	Larceny
2018 – 2021	Variety of Traffic Complaints

Furthermore, there are several adjacent and nearby communities that are gated and not open to the public such as The Estuary, Kokomo Key, and Windsor at Delray Beach. As such, the Applicant now desires to remove public access to the platted open space and access tracts on the Property (“Project”). In so doing, these common areas would only be accessible to OPG residents and guests as well as the adjacent neighborhood, The Estuary, pursuant to a separate easement agreement recorded in Book 14830, Page 1637 of the Official Records of Palm Beach County (“Easement Agreement”). To achieve this, City staff advised Applicant to submit the following applications:

- (1) Replat: To remove the public access language on the plat as depicted below (no other changes to the plat are proposed);



ESTUARY WAY, OLD PALM LANE AND EASTVIEW AVENUE SHOWN HEREON ARE ACCESS TRACTS. ALL ACCESS TRACTS AND EASEMENTS SHOWN HEREON ARE DEDICATED TO THE OLD PALM GROVE HOMEOWNERS' ASSOCIATION TO BE OWNED AND MAINTAINED BY SAID ASSOCIATION WITH THE RIGHT OF THE CITY OF DELRAY BEACH TO ACCESS AND/OR REPAIR WATER AND SEWER MAINS WITHIN SAID TRACTS ~~AND THE RIGHT OF THE PUBLIC TO ACCESS AND UTILIZE SAID TRACTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS.~~

TRACTS OS 1, THROUGH OS 14 AS SHOWN HEREON ARE HEREBY DEDICATED TO THE OLD PALM GROVE HOMEOWNERS' ASSOCIATION AS OPEN SPACE ~~WITH THE RIGHT OF THE PUBLIC TO ACCESS AND UTILIZE TRACTS OS 3, OS 4, OS 5, OS 10, OS 12 AND OS 13 FOR PEDESTRIAN INGRESS AND EGRESS AND ARE TO BE OWNED AND MAINTAINED BY SAID ASSOCIATION.~~

- (2) Modification to Master Development Plan: At this time, the Applicant is simply seeking to remove public access to the following platted tracts on the Property OS 3, OS 4, OS 5, OS 10, OS 12, and OS 13 and access tracts. No other modifications to the Master Development Plan are proposed at this time. Below, the Applicant will demonstrate that Project meets all required findings

Justification Analysis

Required Findings

Pursuant to the City's LDR Section 3.1.1, prior to the approval of development applications, certain findings must be made in a form which is part of the official record which include:

(A) Land Use Map.

As noted above, the Property has a MD land use designation and is zoned PRD. The proposed Project has no impact on the intended land use and density for this Property or for OPG.

(B) Concurrency.

The proposed Project does not impact facilities in any way.



(C) Consistency.

LDR Section 3.1.1(C) provides that overall consistency may be found even if there is some conflict with the performance standards enumerated in LDR Article 3.2 as long as the benefits of the Project outweigh any negatives. LDR Section 3.2.1 provides that the performance standards set forth in LDR Section 3.2.3 and compliance with LDR Section 2.4.5(F)(5) are the bases for determining consistency. As demonstrated below, The Project does not conflict with any performance standards enumerated in LDR Article 3.2.

- **Section 3.2.3- Standards for site plan and/or plat actions.**

- A. Building design, landscaping, and lighting (glare) shall be such that they do not create unwarranted distractions or blockage of visibility as it pertains to traffic circulation.***

The Project does not impact building design, landscaping, and lighting; thus, this criterion is inapplicable.

- B. All development shall provide pedestrian, bicycle, and vehicular interconnections to adjacent properties, where possible, and include accessible routes from the entry points of publicly-accessible buildings to the sidewalk network in accordance with the Americans with Disabilities Act (ADA).***

The Project maintains all pedestrian, bicycle, and vehicular interconnections to adjacent properties where possible, including accessible routes. The only change is that the pedestrian and vehicular network on the private common areas of OPG will only be open to residents of OPG and The Estuary, but not to the public.

- C. Open space enhancements and recreational amenities shall be provided to meet Objective OPR 1.4 and other requirements of the Goals, Objectives and Policies, as applicable, of both the Open Space, Parks, and Recreation Element and Conservation Element.***

The Project does not impact the existing open space enhancements and recreational amenities; thus, this criterion is inapplicable.

- D. Any proposed street widening or modifications to traffic circulation shall be evaluated by the City, and if found to have a detrimental impact upon or***



result in the degradation of an existing neighborhood, the request shall be modified or denied. [Amd. Ord. 13-99 3/16/99] (Ord. No. 23-20, § 12, 9-10-20)

The Project does not propose any street widening or modifications to traffic circulation; thus, this criterion is inapplicable.

E. Development of residentially zoned vacant land shall be planned in a manner consistent with adjacent development regardless of zoning designations.

There is no vacant land at issue; thus, this criterion is inapplicable.

F. Property shall be developed or redeveloped in a manner so that the use, intensity, and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services: are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs.

The Project does not propose development or redevelopment; thus, this criterion is inapplicable.

G. Development shall provide a variety of housing types that accommodates the City's growing and socio-economically diverse population to meet the Goals, Objectives, and Policies the Housing Element.

The Project does not propose development and maintains existing development; thus, this criterion is inapplicable.

H. Consideration shall be given to the effect a development will have on the safety, livability, and stability of surrounding neighborhoods and residential areas. Factors such as but not limited to, noise, odors, dust, and traffic volumes and circulation patterns shall be reviewed and if found to result in a degradation of the-surrounding areas, the project shall be modified accordingly or denied.

As mentioned above, the Project does not propose development; however, the proposed change does increase the safety, livability, and stability within the



OPG community and surrounding neighborhood by limiting its use to OPG residents and adjacent neighbors, the Estuary.

- I. Development shall not be approved if traffic associated with such development would create a new high accident location, or exacerbate an existing situation causing it to become a high accident location, without such development taking actions to remedy the accident situation.***

The Project does not create a high accident location nor does it exacerbate an existing situation; thus, this criterion is inapplicable.

- J. Tot lots and recreational areas, serving children, teens, and adults shall be a feature of all new housing developments as part of the design to accommodate households having a range of ages. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units.***

The Project does not propose any new housing development; thus, this criterion is inapplicable.

Development shall not exceed the maximum limits established in the Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts, of the Neighborhoods, Districts, and Corridors Element or specific standards established in the zoning districts that limit density (dwelling units per acre) or intensity (floor area ratio) and must adhere to whichever limit is lower. Development in areas included in density or incentive programs (i.e. workforce housing programs specified in Article 4.7-Family/Workforce Housing) may exceed the Standard density limit, up to the specified Revitalization/Incentive density established for the program: development in all other areas shall not exceed the Standard density.

The Project does not propose any changes to density or intensity; thus, this criterion is inapplicable.

(D) Compliance with LDRs.

LDR Section 3.1.1.(D) provides that the approving body address the items found in LDR Section 2.4.5 and in special regulation portions of individual zoning district regulations. As such, the Applicant will demonstrate consistency with LDR Section 2.4.5(F)(5) and LDR Section 4.4.7(H)(2) below.



- **Section 2.4.5(F)(5) – Findings.** *In addition to provisions of Chapter 3, the approving body must make a finding that development of the property as represented by the Class V site plan or MDP will be compatible and harmonious with adjacent and nearby properties and the City as a whole, so as not to cause substantial depreciation of property values.*

As mentioned numerous times, the Project does not propose development, but the Project will be compatible and harmonious with adjacent and nearby properties and the City as a whole. Property values will increase due to the enhanced safety and exclusive use of the common areas by OPG residents.

- **Section 4.4.7(H)(2) – Special Regulations.**

In approving the original Master Development Plan for the OPG, the Planning and Zoning Board made a finding that it met the Special Regulations applicable to Master Site Plans within the PRD zoning district. The Applicant will demonstrate below that the proposed Project continues to meet these Special Regulations.

(a) The development plan provides for an effective and unified treatment of the development potential of the site, making appropriate provisions for the preservation of scenic features and amenities of the site.

The Planning and Zoning Board found that the Master Development Plan for OPG provided for an effective and unified treatment of the development potential of the site with appropriate provisions for the preservation of scenic features and amenities of the site because: (1) approximately 133 mature quality specimen trees from the nursery that previous operated on site were preserved on site; (2) two common passive open space areas as well as a community pool were provided; (3) a pocket park, La Hacienda Gardens, was provided including a tot lot and landscaping to serve the residents of OPG and the adjacent neighborhood to the south. As such, the removal of public pedestrian ingress and egress rights to open space tracts that are internal to OPG has no impact on this finding. The residents of OPG will continue to enjoy access to La Hacienda Gardens via the open space tracts within OPG while residents of the La Hacienda subdivision (to the south) will continue to enjoy access to La Hacienda Gardens via North Lake Avenue. As such, the Project continues to provide for an effective and unified



treatment of the development potential of the site with appropriate provisions for the preservation of scenic features and amenities of the site.

(b) The development plan fosters harmony with existing or proposed development in areas surrounding the site.

The Planning and Zoning Board found that the Master Development Plan for OPG fostered harmony with existing or proposed development in areas surrounding the site because: (1) the Property is located in a mixed use area consisting of residential and commercial land uses; (2) the OPG community was integrated well with the existing community by creating pedestrian and vehicular access, which are open to the public, to adjacent neighborhoods; and (3) it met a goal of the North Federal Highway Redevelopment Plan by providing single family housing east of Federal Highway within the redevelopment area. Although the Applicant is seeking to remove the public's right of pedestrian ingress and egress to the specified platted open space tracts, the Project continues to be well integrated with adjacent communities as residents and guests of the adjacent private, gated community, The Estuary, will continue to enjoy access to these common areas pursuant to the Easement Agreement. It should also be noted that the grant of public pedestrian ingress and egress rights pursuant to the Plat was very limited and specific such that the public does not currently enjoy rights of pedestrian ingress and egress through the entire sidewalk network within OPG but rather enjoys access to specific open space tracts that provide for east-west public pedestrian ingress and egress from North Federal Highway along the south side of Estuary Way to the gate of The Estuary and for north-south public pedestrian ingress and egress from La Hacienda Gardens along the eastern property line of OPG and terminating at the eastern edge of Eastview Avenue. Because the public has access to La Hacienda Gardens directly from North Federal Highway along North Lake Avenue and because the access rights of residents and guests of The Estuary are ensured pursuant to the Easement Agreement, the Project has no impact on OPG's harmony with the existing community.

(c) Buildings in the layout shall be an integral part of the development and have convenient access to and from adjacent uses and blocks.

The Project has no impact on the layout of OPG, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.



(d) In the multiple family portion, individual buildings shall be related to each other in design, masses, materials, placement, and connections so as to provide a visually and physically integrated development. Treatment of the sides and rear of buildings shall be comparable in amenity and appearance to the treatment given to the front.

The Project has no impact architectural features, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.

(e) The landscape treatment for plazas, streets, paths, and service and parking areas shall be designed as an integral part of a coordinated landscape and street furniture design.

The Project has no impact on landscape treatment, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.

(f) The location, shape, size, and character of the common open space must be suitable for the contemplated development in terms of density, population characteristics, and housing types.

The Project has no impact on the location, shape, or size of the common open space elements within OPG. Limiting the use of these existing common open space elements to residents and guests of OPG and The Estuary communities will improve the character of the common open space elements. Moreover, the Project is more closely aligned with intended character of the common open space as it was designed primarily for the use of OPG residents, guests, and neighboring community.

(g) Common open space must be used for amenity or recreational purposes and must be suitably improved for its intended use. Natural features, worthy of preservation, shall be incorporated into the common open space system.

The Project has no impact on the use of common open space for amenity or recreational purposes, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.



(h) Roads, pedestrian ways, and open space shall be designed as an integral part of the overall design and shall be properly related to buildings and appropriately landscaped.

The Project has no impact on the design of roads, pedestrian ways, or open space, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.

(i) There shall be an adequate amount of pedestrian ways and landscape spaces to limit pedestrian use of vehicular ways, and to separate pedestrian ways and public transportation loading places from general vehicular circulation.

The Project has no impact on the amount of pedestrian ways and landscape spaces, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.

(j) The location and design of pedestrian ways should emphasize desirable views of new and existing development.

The Project has no impact on the location or design of pedestrian ways, and the removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact on this finding.

(k) Tot lots and recreational areas shall be a feature of all new housing developments containing more than 12 units and located outside the downtown area.

As noted above, the Applicant dedicated a pocket park, La Hacienda Gardens, to the City as part of the original development approvals for OPG and constructed a tot lot and landscaping within the park to serve the residents of OPG and the adjacent neighborhood to the south. The removal of public pedestrian and vehicular ingress and egress rights to open space and access tracts that are internal to OPG have no impact. have no impact on this finding. The residents of OPG will continue to enjoy access to La Hacienda Gardens via the open space tracts within OPG, while residents of the La Hacienda subdivision (to the south) will continue to enjoy access to La Hacienda Gardens via North Lake Avenue.



- **North Federal Highway Redevelopment Plan**

The City Commission adopted the North Federal Highway Redevelopment Plan (“Plan”) on March 16, 1999. The goals of the Plan include improving the appearance of the redevelopment area, providing for increases in permitted residential densities adjacent to Intracoastal Waterway, and stimulating the revitalization of the North Federal Highway Corridor by encouraging new residential development within the redevelopment area that will in turn help to stimulate commercial development along North Federal Highway by creating demand for goods and services in this area. OPG has helped to fulfill several of these goals. OPG has been a stable residential community for almost twenty (20) years and is one of the most beautiful and in-demand communities in the North Federal Highway Corridor. It continues to meet the intent of the Plan by stimulating revitalization in the surrounding neighborhood and patronizing local commercial goods and services.