

12. **CITY MANAGER**

a. **Informational Items**

- vi. **Report from Planning Department Regarding Lee County Hearing Examiner Recommendation to Approve an Amendment to the South Seas Plantation Master Plan, Reallocate Six Dwelling Units and Authorize Impacts to Mangrove Wetlands**



# City of Sanibel

Planning Department

## MEMORANDUM

DATE: October 15, 2008

TO: Judie Zimomra, City Manager

FROM: Robert J. Duffy, AICP  
Planning Director

SUBJECT: **Lee County Hearing Examiner (DCI2004-00036) Recommendation to Approve an Amendment to the South Seas Plantation Master Plan, Reallocate Six Dwelling Units and Authorize Impacts to Mangrove Wetlands**

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On August 15, 2008, the Hearing Examiner for Lee County issued a report recommending that the Lee County Board of County Commissioners approve an application, as submitted by Plantation Development, LTD, to amend the South Seas Resort Master Development Plan (ADD2002-00098) by allocating the remaining six unallocated dwelling units to, and reconfiguring the site plan for, the Harbour Pointe development area, enabling the construction of 24 units in four 6-plex buildings on the north end of Bay Island.

The subject 5.24 acre property is part of the South Seas Plantation located on the northeast side of Captiva Island in unincorporated Lee County. Bay Island and the proposed development are separated from the South Seas Resort by a narrow channel that connects Bryant Bayou with Pine Island Sound. The requested development would result in the encroachment into 2.61 acres of mangrove wetlands, the removal of the shell road along the sound that has historically provided access to the site and the construction of a draw bridge over the Bryant Bayou channel.

The subject application was first considered by the Hearing Examiner in September 2004. However, the case was remanded back to the Hearing Examiner to enable the applicant to obtain a South Florida Water Management District Environmental Resources Permit (ERP). This permit was issued in March 2008 approving the requested impacts to 2.61 acres of mangrove wetlands subject to both on and off-site mitigation.

This case presents two significant issues: the consistency of the application with the Lee County Comprehensive Plan (Lee Plan) and the related policies and requirements to avoid or minimize wetland impacts; and the importance of protecting the natural resources critically important to Captiva Island and Pine Island Sound.

Judie Zimomra  
Lee County Hearing Examiner Recommendation  
South Seas Plantation Master Plan  
October 15, 2008

The City's Departments of Natural Resources and Planning are jointly preparing a response to the report issued by the Hearing Examiner which is scheduled to be considered by the Lee County Board of County Commissioners on November 3, 2008. The response will be in collaboration with several parties, including the Sanibel Captiva Conservation Foundation and the J. N. Ding Darling National Wildlife Refuge, that have been actively involved with this case and have testified before the Hearing Examiner.

Please contact me if you have any questions regarding the subject Hearing Examiner report.

C: Rob Loflin, Ph.d., Director of Natural Resources



**LEE COUNTY**  
SOUTHWEST FLORIDA

239/533-8100

**BOARD OF COUNTY COMMISSIONERS**

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Examiner

October 8, 2008

Dear Applicants, Representatives, Hearing Participants,  
and Other Interested Parties:

**RE: DCI2004-00036 PLANTATION DEVELOPMENT LTD, in reference to HARBOUR  
POINTE**

*APPROVED*

Enclosed please find the above referenced Lee County Hearing Examiner Decision or  
Recommendation.

Thank you for your interest and participation in the Hearing Examiner process.

Sincerely,

DIANA M. PARKER  
CHIEF HEARING EXAMINER  
LEE COUNTY, FLORIDA

Enclosure

SUMMARY OF HEARING EXAMINER RECOMMENDATION

Rec'd Bruce  
10/19/08

DCI2004-00036  
HARBOUR POINTE (REMAND)

**I. APPLICATION**

This matter came before the Lee County Hearing Examiner as a Remand of the 2005 application for the amendment of the South Seas Plantation Master Development Plan, to develop 24 dwelling units on the reconfigured "vested" Harbour Pointe development area, with a drawbridge providing access from Captiva Island, and to authorize mangrove wetland impacts, for the property located at the north end of Captiva Island, Lee County, Florida.

**II. HEARING EXAMINER RECOMMENDATION (SYNOPSIS)**

This was a request to allow the construction of 24 dwelling units in four 6-plex buildings on a 5.24-acre parcel at the north end of Bay Island. The subject property is part of the South Seas Plantation Resort, and Bay Island lies adjacent to the northeast side of Captiva Island, being separated by a narrow channel providing access between Bryant Bayou and Pine Island Sound. The requested development would result in the encroachment into 2.61 acres of mangrove wetlands, the removal of the shell road along the Sound that has historically provided access to the site, and the construction of a drawbridge over the Bryant Bayou channel for access.

The 2005 case was remanded to the Hearing Examiner to allow Applicant to obtain the South Florida Water Management District Environmental Resource Permit (ERP), before further action was to be taken. The ERP was issued in March 2008, approving the requested 2.61 acres of mangrove impacts, with specific on- and off-site mitigation, and the final two days of hearing were held in July and August 2008. Two issues arose in the final hearings - whether the request was consistent with the Lee Plan, more specifically whether the ERP met the County's requirements to avoid and minimize wetland impacts and protect Captiva mangroves to the greatest extent possible.

Based on the evidence and testimony contained in the five days of hearings (2005 and 2008), the undersigned Hearing Examiner found that the request, as conditioned in the full Recommendation, met the criteria for approval set out in LDC Section 34-145, and was consistent with the intent of the Lee Plan, the Land Development Code, and the 2002 Administrative Interpretation. She found that the 24 2,500-square-foot dwelling units, as conditioned, were consistent and compatible with other residential uses in the Resort, and that the development, as conditioned, would not adversely impact the adjacent mangrove wetlands, or other significant natural resources in and around Captiva Island.

For all the reasons and conclusions discussed more fully in her Recommendation, the undersigned Hearing Examiner recommended that the BOCC APPROVE THE REQUEST, AS CONDITIONED IN THE FULL RECOMMENDATION.

The full Recommendation was issued on the 8<sup>th</sup> day of October, 2008, and a complete copy forwarded to the offices of the Lee County Board of County Commissioners.

**III. LOCATION OF COMPLETE RECOMMENDATION AND ATTACHMENTS**

Copies of the Hearing Examiner's Recommendation, Official Transcripts or summaries, List of Exhibits, Public Participation, Staff Report, and Legal Description are available for review at [www.lee-county.com/HearingExaminer/](http://www.lee-county.com/HearingExaminer/) (click on Search Document), the Development Services Division, and the Office of the Hearing Examiner. Copies may be obtained for the actual cost of duplication. The exhibits submitted during the hearing are available for review at the Office of the Hearing Examiner, and will be transmitted to the Board of County Commissioners prior to their hearing on this matter.

**IV. HEARING BEFORE BOARD OF COUNTY COMMISSIONERS**

The Board of County Commissioners (BOCC) will hold a hearing at which time they will consider the record made before the Hearing Examiner. Only participants who provided testimony or evidence on the record at the Hearing Examiner proceedings, or their representative, will be allowed to address the BOCC. The content of all statements by persons addressing the BOCC shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation. Any allegations of the discovery of relevant new evidence, which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record, could lead to a remand of the case to the Hearing Examiner to hear and consider the new evidence.

It is anticipated that this matter will be heard by the BOCC on November 3, 2008; however, the Department of Community Development/Development Services Division will send written notice to all participants of the actual date and time of this hearing before the BOCC.

**V. UNAUTHORIZED COMMUNICATIONS**

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

**OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA**

**RECOMMENDATION ON REMAND BY BOCC**

**REZONING:** DCI2004-00036  
**APPLICANT:** PLANTATION DEVELOPMENT LTD, in reference to HARBOUR POINTE  
**ORIGINAL HEARING DATE:** SEPTEMBER 15, 2004  
**CONTINUED HEARING DATES:** NOVEMBER 3, 2004, FEBRUARY 9, 2005, APRIL 8, 2005, APRIL 26, 2005, AND MAY 3, 2005  
**STATUS HEARING DATES:** JULY 27, 2006, SEPTEMBER 28, 2006, DECEMBER 7, 2006, FEBRUARY 8, 2007, APRIL 5, 2007, JUNE 7, 2007, AUGUST 9, 2007, AND NOVEMBER 8, 2007  
**ZONING BOARD DATE:** FEBRUARY 18, 2008  
**REMAND HEARING DATES:** JULY 31, 2008 & AUGUST 7, 2008  
**WRITTEN SUBMISSION:** AUGUST 15, 2008

**I. APPLICATION:**

Remand of 2005 application for the amendment of the South Seas Plantation Master Development Plan, to allocate remaining six unallocated dwelling units to the Harbour Pointe development area, to reconfigure the previously reviewed 18-unit hotel site plan for the Harbour Pointe development area, to permit a bridge crossing from Captiva Island to the Harbour Pointe development, and to authorize impacts to mangrove wetlands.

Filed by PLANTATION DEVELOPMENT, LTD, C/O RAYMOND A. PAVELKA, 13451 McGregor Boulevard, Suite 31, Fort Myers, Florida 33919-5942 (Applicant); STEVEN C. HARTSELL, ESQUIRE, PAVESE LAW FIRM, 1833 Hendry Street, Fort Myers, Florida 33901 (Agent).

The subject property is located at Captiva, (McGregor Blvd south to Sanibel Causeway - right on Periwinkle Way west to San-Cap Road west over Blind Pass Bridge continue northwest to Captiva Drive, SW turn right into South Seas Resort, proceed north turn right at South Seas Resort Maintenance - follow shell road east and north road terminates as Harbour Pointe), in Section 22 & 23, Township 45 South, Range 21 East, Lee County, Florida (District #1).

**II. STAFF REPORT AND RECOMMENDATION: APPROVED WITH CONDITIONS**

The Department of Community Development Staff Report was prepared by Nettie M. Richardson. The Staff Report is incorporated herein by this reference.

**III. RECOMMENDATION OF HEARING EXAMINER:**

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **APPROVE** the Applicant's request to amend the South Seas Resort Master Development Plan (ADD2002-00098) to allocate the remaining six unallocated dwelling units to, and reconfigure the site plan for, the Harbour Pointe development area;

together with Harbour Pointe entrance road and a bridge crossing the channel to Bryant Bayou and designation of wetland impacts and conservation areas for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS:

**A. CONDITIONS:**

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the 4-page Master Concept Plan entitled "Harbour Pointe," stamped received June 26, 2008, last revised June of 2008, attached hereto as **Exhibit B**, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. Uses and Site Development Regulations

The following Limits apply to the project and uses:

Applicable development regulations in ADD2002-00098

Dwelling Units - 24 multi-family residential units ( four 6-plex buildings)  
Accessory Uses - Swimming pool, gazebo, single slip water taxi dock and  
canoe/kayak launch  
Private bridge

**Environmental Conditions**

3. Prior to local development order approval, development order plans must be consistent with the approved South Florida Water Management District Environmental Resource Permit No. 36-00583-S-02, as conditioned or as otherwise modified

4. Prior to local development order approval, draft conservation easements as required in South Florida Water Management District Environmental Resource Permit No. 36-00583 -S-02 for the 72.76 acres preservation area delineated on the exhibit "F-1" attached to the Environmental Sciences staff report entitled "Harbour Pointe Preservation Plan" and 1.39 acre mangrove trimming areas must be submitted for Lee County Division of Environmental Sciences and Attorney's Office review and approval. The conservation easements must be dedicated to Lee County and other appropriate agencies and/or environmental entities. The Conservation Easements must be recorded prior to Certification of Compliance.

5. Prior to the issuance of a Lee County development order for Harbour Pointe, the Applicant shall obtain the United States Coast Guard (USCG) permit approving such a bridge and shall comply with all terms and conditions of the USCG permit. As illustrated on the approved South Florida Water Management District (SFWMD) Environmental Resource Permit No. 36-00583-S-02, the proposed bridge design is at a 12-foot elevation NGVD. Any modification for development order plans to increase bridge elevation to a maximum of 18 feet NGVD to allow the bascule equipment to be placed under the fixed portion of the

structure will require further review and authorization from SFWMD prior to local development order approval.

6. Prior to local development order approval, the applicant must provide updated listed species surveys meeting the requirements of Land Development Code (LDC) Section 10-473 for 5.24-acre Harbour Pointe development site and Parcel A, as described in the legal descriptions, and any necessary Florida Fish and Wildlife Conservation Commission (FWC) and/or U.S. Fish and Wildlife Service (FWS) permits. Any request for removal of nests protected by the Endangered Species and/or Migratory Bird Treaty Act (Title 50 CFR Part 21) must be coordinated with Florida Fish and Wildlife Conservation Commission (FWC) and Division of Environmental Sciences.

7. Prior to local development order approval, listed wading bird species and Florida manatee management plans, meeting the requirements of Land Development Code Section 10-474, for 5.24 acre Harbour Pointe development site and Parcel A, as described in the legal descriptions, must be submitted for the Division of Environmental Sciences' staff review and approval. The plan must include an informational brochures for residents on living with listed wading bird species and manatees.

8. Docks or fishing piers are prohibited along the bay and harbor shorelines of the Harbour Pointe development; except that a single slip water taxi dock and/or canoe/kayak launch may be proposed along the harbor/channel shoreline of the Harbour Pointe 5.24 acre project site. An updated seagrass survey must be provided and the proposed locations of the slip and/or launch must avoid impacts to the required mangrove buffers and avoid or minimize impacts to seagrass beds subject to State and Federal permit approvals. The location of the single slip water taxi dock and/or canoe/kayak launch must be depicted on development order plans, and a Lee County Dock and Shoreline Permit must be obtained prior to construction.

9. Prior to local development order approval, the applicant must submit for review and approval of the Division of Environmental Sciences, landscape plans prepared by and bearing the seal of a landscape architect registered in the State of Florida, meeting Administrative Interpretation 2002-00098 landscape requirements and applicable resolution conditions.

10. Required landscaping for the 5.24-acre Harbour Pointe development must utilize a minimum of 75% native trees and shrubs, however, any non-native plants will be limited to plants contained in the Proposed List of Approved Harbour Pointe Non-Native Landscape Plants.

Common Name	Scientific Name
Dwarf Royal Palm	Adonidia merrillii
Shrub Allamanda	Allamanda schottii
Bougainvillea	Bougainvillea sp.
Pitch Apple	Clusia rosea
Croton	Codiaeum variegatum

Hurricane Palm	Dictyosperma album
Dwarf Crown of Thorns	Euphorbia millii 'Rosy'
Blue Daze	Evolvulus glomeratus
Hibiscus 'Mixed'	Hibiscus spp.
Ixora 'Nora Grant'	Ixora sp.
Dwarf Jatropha	Jatropha intergerrima
Shrimp Plant	Pachystachys lutea
Cranberry Penta	Penta lanceolata
Sylvester Date Palm	Phoenix sylvestris
Plumbago	Plumbago auriculate
Frangipani	Plumeria spp.
Bird of Paradise	Strelitzia nicolai
Pink Cedar	Tabebuia heterophylla
Walking Iris	Trimezia martinicensis
Winn Palm	Veitchia winin
Foxtail Palm	Wodyetia bifurcata

- 1) Currently 12± Coconut Palms (*Cocos nucifera*) identified under the Lee County protected tree list, and considered native, are located on site and more will be added.
- 2) Sod will be utilized around buildings, pool, and walkways but is not attributed towards landscape planting native - non-native calculations.
- 3) No more than 25% of landscape plantings will be non-native.

11. Prior to local development order approval, landscape plans must depict the top of berm and back slope landward of the proposed rip rap revetment along the east property line planted with 100% native plantings consisting of a minimum of five (5) trees, 18 shrubs, and groundcover per 100 linear feet to create a minimum overall buffer of 35 feet. No irrigation and fertilizer is to be utilized within this enhanced area.

12. Prior to local development order approval, development order plans must provide cross sections depicting proposed interface between the 5.24-acre development and:

- a. mangrove buffer preserve along Pine Island Sound at the locations of the proposed retaining wall and rip rap revetment areas
- b. mangrove buffer preserve along Bryant Bayou
- c. mangrove preserve to the south

13. The retaining walls and rip rap revetment design must be in compliance with the Land Development Code Section 26-75. A Lee County Dock and Shoreline Permit must be obtained prior to their construction.

14. Prior to local development order approval, landscape plans must depict the supplemental planting of red mangroves (*Rhizophora mangle*) or other suitable species at the toe of slope of proposed rip rap revetment along the east property line and seaward of the proposed retaining wall along the northeast corner and west property line of the 5.24 acre project site.

15. Prior to local development order approval, landscape plans must delineate proposed dry and wet retention plantings as required by South Florida Water Management District (SFWMD) Environmental Resource Permit (ERP) No. 36-00583-S-02.

16. Vehicular/Pedestrian Impacts

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

17. Lee Plan Consistency

Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.

18. Concurrency

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

19. Compliance to Lee Plan and ADD2002-00098

This development must comply with all of the requirements of ADD2002-00098 at the time of local development order approval, except as may be granted by deviations approved as part of this amendment.

**B. DEVIATION:**

Deviation 1 from LDC Section 34-2016(3), which requires a 24-foot aisle width associated with 90-degree parking spaces not located under the buildings, to allow an aisle width to be 20 feet. The Hearing Examiner recommends **APPROVAL** of this deviation, subject to the following condition:

At the time of local Development Order, the Applicant must install either a guard rail or a Type F curb continuing approximately 320 feet along the west

side of Harbour Pointe Drive from the current terminus of the Type F curbing to the northerly extent of the Mangrove Buffer Preserve Area.

#### IV. HEARING EXAMINER DISCUSSION:

This matter was originally heard before the Lee County Hearing Examiner and a recommendation of approval, with conditions, was issued July 2005. However, the 2005 Recommendation was never considered by the Board of County Commissioners (BOCC). Between July 2005 and February 2006, Applicant requested several continuances and then requested the BOCC to remand the case to the Hearing Examiner. The purpose of the remand was to allow the South Florida Water Management District Environmental Resource Permit (ERP) to be issued and its contents and conditions to be reviewed and considered by Staff and the Hearing Examiner in the "final" recommendation to the BOCC. That remand was granted in February 2006.

When the ERP was repeatedly challenged, in DOAH hearings, between 2006 and late 2007, the Hearing Examiner returned the case to the BOCC with the recommendation that it be remanded to Staff to await the issuance of the final ERP. It was explained that the Hearing Examiner had no authority to remand a case to Staff, and had no authority to continue holding the case open, without further action. The BOCC remanded the case to Staff and the finalized ERP was issued in March 2008, at which time the case was rescheduled for hearing before the Hearing Examiner for days in July and August 2008.

After the ERP was issued, Applicant revised the 2005 application and site plan to conform to the approved ERP. They reduced the size of the development area, the amount of mangrove wetland impacts, and the size of the 24 units. For purposes of this Recommendation, the "revised" plan will be referred to as the 2008 plan to distinguish it from the 2005 plan.

The Hearing Examiner's 2005 Recommendation contained 14 pages of analysis and discussion by the Hearing Examiner, excerpts of which are contained herein as part of the "new" analysis and discussion. The 2005 hearing record, with the exception of superseded Exhibits, are combined herein with the record created in the 2008 hearings. All persons who spoke during both the 2005 and 2008 hearings are entitled to speak before the BOCC, and their names have been compiled in this Recommendation.

#### Analysis

This is a request to amend and reconfigure the 2002 South Seas Resort Master Development Plan (MDP) to allow development of 24 resort-style dwelling units, on 5.24 acres of uplands and mangrove wetlands, for the Harbour Pointe development on Bay Island. Applicant owns a total of 78± acres located on Bay Island and three nearby parcels on Captiva Island. About 1.6± acres at the northern end of Bay Island are uplands; the rest are mature mangrove wetlands.<sup>1</sup>

Bay Island is a long narrow "peninsula" located along the east side of Captiva Island, between Captiva and Pine Island Sound. It is situated near the north end of Captiva Island,

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<sup>1</sup> Applicant does not own all of Bay Island, only the northern and southern ends of the Island. The middle of the island was sold to and is used by the Resort's water treatment facility.

and is separated from the Resort's Marina Villas and Harbourside Villas condominium complexes by Bryant Bayou and a narrow channel leading out into the Sound. The 1.6-acre upland portion of the Island was created in the 1970's and 1980's as a spoil area from the maintenance dredging of the Resort Marina. It is zoned RM-2 under the MDP, and is designated Outlying Suburban in the Lee Plan. The remaining 76+ acres are designated Wetlands in the Lee Plan.

Issues:

1. The main issue in this case is whether the proposed destruction of 2.61± acres of mature mangroves is consistent with the provisions of the (renumbered) Lee Plan Goals 13, 104, 107, and 114. These provisions relate to protection of mangroves and mangrove wetlands in Lee County and on Captiva Island, development of coastal areas and barrier islands, protection of natural resources, environmentally sensitive lands, natural habitats, coastal planning areas, wetlands, and estuarine water quality and economic productivity.
2. A secondary issue involves whether the Basis of Review by the SFWMD in the ERP for the mangrove wetland impacts is consistent with the County's adopted standards of "avoid and minimize" and protecting or preserving Captiva mangroves "to the greatest extent possible." (Policies 114.1.2 and 13.1.12, respectively). A sub-issue of that is to what degree the Hearing Examiner and BOCC decisions are controlled by the approved wetland impacts in the ERP, if the standards of review are different.  
**Note:** the Assistant County Attorney involved in the remand hearing argued that the Hearing Examiner does not have the authority to "define" the phrase "to the greatest extent possible," nor to determine whether the impacts approved in the ERP are consistent with the intent of that phrase. The Chief Hearing Examiner disagrees with that argument, responding that such a limitation on the Hearing Examiners' authority would jeopardize their abilities to perform their delegated duties and responsibilities in each zoning and land use case brought before them.

**Background on South Seas Resort Approvals - Relating Only to Harbour Pointe**

(Based on evidence and testimony from 2005 Hearings)

Mariner Properties (prior owner) received approval, in 1973, for a long-range Master Development Plan (MDP) for a vacation resort use, comprised of 912 dwelling and hotel units and other accessory commercial uses. At that time, the RM-2 zoning on the Resort property would have allowed up to 3,900 dwelling units, but Mariner chose to preserve some of the natural, mature mangrove systems and only requested a density of three units per acre - for a total of 912 units. The 1973 MDP roughly depicted a golf course covering all of Bay Island, with the possibility of adjacent golf villas at the area known as Harbour Pointe (Area 19 on MDP). (Applicant's 2005 Exhibit #1)

In 1985, the long-range MDP was revised to, among other things, relocate the golf villas from Bay Island to the northernmost point of Captiva Island (nka "Land's End Village") and replaced those villas with 18 executive hotel units on Area 19/Harbour Pointe. Three golf holes were also depicted on the mangrove wetlands adjacent to the 1.6-acre Harbour Pointe development area. Mariner stated that those golf holes would not be constructed without a favorable environmental study and feasibility reevaluation of the appropriateness of such a use in that area. (Applicant's 2005 Exhibits #2 and #27)

At some point in 1985, a section, across the middle of Bay Island, was conveyed to a utility company and a water treatment plant was subsequently built there. That strip divided Bay Island into a northern half - containing the Harbour Pointe lands - and a southern half, a portion of which had been previously designated future preservation lands in mitigation for various wetland impacts occurring in other areas of the Resort.

During that time frame, the 1985 MDP was determined by Lee County to be consistent with the newly adopted Lee Plan, and to be exempt from the requirements of the Development Standards Ordinance (fore-runner of Chapter 10 of the Land Development Code). Regardless of that exemption, Mariner was required to submit detailed plans for each development proposal to Lee County for comparison against the 1985 MDP. If the County found that a proposal was not consistent with the MDP, Mariner would be required to obtain the necessary approvals and permits under the current regulations. (Applicant's 2005 Exhibit #27)

Attached to Lee County's July 23, 1985 letter, finding Lee Plan consistency, was a copy of a May, 1985 letter from Mariner, which described the existing and future development plans for the Resort. The County's finding of consistency was based on that letter and the plans attached thereto. (Applicant's 2005 Exhibit #26) In the Mariner letter, the Harbour Pointe (Area 19) tract was referenced and described as follows: <sup>2</sup>

Page two - 3) Development of small scale residential units on a few isolated sites to provide a variety of housing types. These will include: . . . . .

- Harbour Pointe 18 executive suites

Page four - IV. HARBOUR POINTE

This phase of development is intended to be a small enclave of one and two story executives suites. It is located on a existing spoil mound at the north tip of "Bay Island." Guest access and resort services will be via a launch from our existing marina. An existing service road will be used for emergency access.

The development of Harbour Pointe is planned for the spring of 1987.

On page seven of its May 1985 letter (Applicant's Exhibit #26), Mariner also expressed the following expectations toward the completion of the Resort development:

Master Land use plans typically show the overall development approach for a particular property. They are, however, dynamic designs which must be reviewed periodically as the community develops, and modified in response to:

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<sup>2</sup> This description of the planned Harbour Pointe development was reiterated on page three of the 1987 Project Overview - attached to the February 1987 letter from Mariner to Lee County (Applicant's 2005 Exhibit #27)

- Changing needs of owners and guests in the community as reflected by their thoughts, comments and activities
- Changing economic conditions which make alterations to the plan desirable in order to maintain the financial health of the community
- Changing requirements of building codes (particularly life safety)
- Changing requirements of financial institutions
- Evolution in the state of the art of community planning, as well as technological innovations affecting the development process.
- Growing knowledge of how to maintain an appropriate balance between human needs and the natural system being affected by man's presence on the land.

In both the 1985 Project Overview letter and Mariner's February 1987 update (Applicant's 2005 Exhibit #27), the golf course on Bay Island - adjacent to the Harbour Pointe area - was referenced. In the 1985 letter (page three), Mariner recognized that it would be "difficult to permit" development of a golf course "in an area that is mostly mangrove forest." They reduced the number of holes proposed for the north end of Bay Island from nine to two or three, and committed to do an environmental feasibility study, if that request was made. In the 1987 letter (page two of the attachment), Mariner again referenced the golf course adjacent to the planned Harbour Pointe development, reiterating that they would request the three holes only after they "re-initiate the environmental study that was done in 1973 and reevaluate the feasibility" of adding those three holes in that area.

Between 1973 and 1992, questions arose about Mariner's right to "maintain" the narrow shell roadway along the Pine Island South shoreline (east side) of Bay Island. Each time the questions arose, Mariner's actions were reviewed and deemed not to be violations of Lee County regulations. (Applicant's 2005 Exhibit #29) In 1992, the County Attorney's Office issued an opinion letter finding that the Resort had received an exemption from the Development Standards Ordinance in 1985, and, as such, was also not subject to the County's Mangrove, Wetland, or Tree Protection Ordinances. (Applicant's 2005 Exhibit #26.) Based on that statement, Mariner's ability to construct or maintain the emergency "service road" was exempt from the permitting requirements of those three Ordinances.

It was the opinion of the County Attorney's Office that, since the road was to be used for emergency access, it would have to be constructed to meet the minimum standards for such an accessway. That statement was later interpreted to mean that the road would have to be a minimum of 31 feet wide, inclusive of paved lanes, shoulders, slopes and drainage, instead of the 12- to 20-foot width of shell that was actually being maintained by Mariner.

In 1998, Mariner sold the developed portions of the Resort to Meristar Hospitality Corp., leaving Bay Island and several smaller parcels in the ownership of Applicant herein - Plantation Development, Ltd (aka PDL).

In 2002, it again became necessary for Lee County to determine the remaining development rights in the Resort. Relying on a 2002 amendment to the MDP, Lee County issued an Administrative Interpretation that described and explained the existing development and established the as-yet unused dwelling units and development rights held by the two owners for purposes of future permitting. (Applicant's 2005 Exhibit #2) The 2002 MDP became the

final plan on which Applicant could rely for future development rights; the "rights" previously held under the 1973 and the 1985 plans were subsumed into and extinguished by the 2002 MDP and the Administrative Interpretation.

Lee County found that, of the 912 approved units, a total of 37 units had not been built as of the date of the Interpretation - 18 of those units were allocated to Harbour Pointe. Those 18 units were again described as "one-and two-story hotel units." (Pages 6, 7 and 9 of Applicant's 2005 Exhibit #2).

Ultimately, it was determined that only six units had not been allocated to a particular development area and were available for development by either owner (Meristar or Applicant). In a private agreement with Meristar, Applicant obtained the right to add those six units to the 18 units approved for the Harbour Pointe development area. No unit dimensions, area or size, however, were ever attributed to those six units in any of the documents or exhibits submitted during the hearing. Testimony, however, revealed that 18 executive suites/hotel rooms were depicted at about 600 square feet in the 1985 approved plan and were carried forward at that size in the 2002 Administrative Interpretation. (Uhle, 2005 Transcript #2, page 36) Applicant admitted that 600 square feet was consistent with the size of other hotel rooms at the Resort, when it was first planned, but asserted that those units are now being constructed about 50 percent larger. (Pavelka, 2008 Transcript #1, pages 110-112)

Both owners, Meristar and Applicant, agreed with the County's findings and provisions relating to their development rights in the 2002 Administrative Interpretation. One condition of that Interpretation that would ultimately affect the development of the Harbour Pointe parcel was found on pages 15 and 16 of the Interpretation:

- 5.d. Other than as discussed in the letter from the Lee County Attorney's Office, dated June 11, 2002, no wetlands impacts are authorized by the SSRMDP [South Seas Resort MDP]. Prior to proposing amendments to the SSRMDP for development that may encroach on wetlands - including but not limited to any expansion of the Harbour Pointe development area - the developers will initiate an environmental study adequate to evaluate the feasibility of such development in wetlands.

#### **Applicant's Proposed Development Plan(s) (2005 hearings)**

With the remand of this case and the 2008 revisions to the proposed MCP, neither the 2004 nor the 2005 proposed plans are relevant to the BOCC's consideration. However, the history of the plans should benefit the BOCC in understanding the arguments and assertions being made by the various parties.

Applicant's initial application (2004) proposed developing the 24 units on a 7.4-acre tract, of which about 5.8 acres were wetlands. The 2004 plan included tennis courts, six quadplex buildings, a pool/spa and clubhouse area, a filter marsh (water retention area), and the elimination of the .6-acre emergency access road along the Sound. Prior to the 2005 public hearings, however, Applicant reduced the overall development area to about 5.55 acres, of which about 3.95 acres were mangrove wetlands. However, they did not present the

appropriate revised MDP at the 2005 hearing, indicating that they would amend it after the BOCC hearing, in case there were more changes.

The 2004 and early 2005 plans depicted the 24 units in six 2-story stilt (quadplex) buildings, each building having a footprint of about 8,400 square feet - which did not include the decks, patios or stairs. Under the 2005 proposed plan, the 24 units would have an average size of about 4,200 square feet per unit. Applicant had not settled on exact sizes for each unit, and admitted that some might even be larger than 4,200 square feet. The larger units would be balanced out by the second story units that might be smaller - it all depended on the roof lines of the buildings. (Palvelka, 2005 Transcript #3, page 15)

They acknowledged that the 18 units were "vested" for 600-square-foot hotel rooms, but pointed out that the six additional units were not similarly restricted in size. After hearing many objections and references to the large size of the units and buildings during the 3-day hearing, Applicant offered to ". . . commit to a 3,200-square-foot average size for air conditioned space. That, of course, would not include porches, elevators, exit stairs. . . ." (Pavelka, 2005 Transcript 3, Page 15). They, however, did not offer to reduce the 8,400-square-foot building footprint, which the public insisted accounted for the need for the larger development area and the demand for 3.95 acres of wetland impacts.

Applicant explained that, in the 2004 plan, they had, initially, wanted to construct 24 single-family homes on the site, because

. . . a single-family lot, single-family home would be the highest value or the most desirable product that we could provide.... But, at four to six thousand square feet per home . . . . it spreads out too much, so we could not do a good job of reasonably minimizing our impacts to wetlands if we went in that direction." (Pavelka, 2005 Transcript #3, page 14).

Instead, they came up with the 2005 plan, having four units per building, which would reduce the number of setbacks, additional parking areas, and building separation distances, thereby reducing, somewhat, the encroachment into the mangrove wetlands.

The revised 2005 plans depicted the pool and spa area on the 1.6-acre upland, with five of the six buildings lying along the east side of Bay Island - fronting on the Sound. The sixth building was depicted just south of the pool/spa area, closer to the west side of Bay Island. An upland coastal strand was depicted between the east buildings and Pine Island Sound, which would provide the buildings and site with some protection from the wave action of the Sound. The majority of the parking would be located beneath the elevated buildings, and a narrow internal road, with a cul-de-sac at the north and south ends, would provide access to the buildings and the amenity area.

Access to the site, from Captiva Island, would be via a drawbridge constructed across the narrowest part of the channel leading to Bryant Bayou. The entrance drive entered at the southeast end of the development area, and curved through the site to a cul-de-sac at the north end. The access road and drawbridge were to be constructed where the seventh golf hole (owned by Meristar) is/was located on the south side of the Marina Villas condominiums. Applicant and Meristar have an agreement in which Applicant will relocate or reconfigure the seventh hole to allow the proposed construction of the access road and drawbridge. The access road lying across Meristar's property was not, and is not, part of this MCP request.

As part of the mitigation for the 3.95 acres of wetland impacts, Applicant agreed to preserve the remaining wetland acreage (about 7.155 acres) on Bay Island, and several wetland areas on Captiva Island directly abutting Bay Island or Bryant Bayou. Those wetland areas would be dedicated, under a conservation easement, to Lee County and other appropriate state or federal agencies.

The largest of Applicant's wetlands on Captiva Island abuts the southern half of Bay Island (Parcel "C" on Applicant's Exhibit 4) and contains an undisturbed shell mound (Chadwick Mound), which may have some archeological significance to the State of Florida. Under the conservation easement, that shell mound will remain undisturbed and undeveloped. Several other minor shell mound areas were found in the proposed development area, but those mounds were determined not to be of any significant archeological value by Applicant's archeologist and Lee County Staff. Applicant's plan was to install the stilt buildings over those mounds, thereby "protecting" them from future disturbance. (Torrence, 2005 Transcript #1, pages 82-97)

The other two very small areas that Applicant was going to place under the conservation easement were denoted Parcels "D" and "E" on Applicant's 2005 Exhibit 4. Those Parcels are located on either side of the entrance road into the water treatment plant on Bay Island.

Applicant's environmental expert prepared a feasibility study of the development of those wetland areas, as required in the 2002 Administrative Interpretation. It was his expert opinion that the loss of four, or more, acres of mature mangrove wetlands would not be detrimental to the overall mangrove wetland system on Bay Island, and would not have any significant adverse effect on the other functions of the mangrove wetland on this barrier island.

No Deviations were requested as part of the 2005 plan.

#### **Applicant's Proposed 2008 Development Plan**

After receiving the finalized SFWMD ERP in March 2008, Applicant revised the MDP as described below (Applicant's 2008 Exhibits #3a and 4). This chart compares the 2005 and the 2008 plans:

MDP	Property Size	Develop. Area	Wetland Impacts *	Fill Area	Conserv. Area	Number of Bldgs & Units	Unit Size & Bldg Footprint	Other Approval Rec'd.
2005	78+ ac.	6.02 ac.	3.09 ac	4.9 ac.	71.55 ac.	6 - 4plex 24 units	4,200 sf 8,400 sf	None
2008	78+ ac.	5.24 ac	2.72 ac	2.61 ac	72.76 ac	4 - 6plex 24 units	2,500 sf 10,400sf	SFWMD (wetland impact)

\* The 2008 wetland impacts include .11 acres of shading impacts on the mangroves and channel bottom caused from the bridge; the 2.61 acres accounts for the amount of mangrove wetlands that were going to be physically destroyed with this development.

As can be seen from the chart (above), Applicant's revised plan:

- reduces the development area by about 8/10ths of an acre,
- reduces the wetlands impact area by about 4/10ths of an acre,
- reduces the unit size by about 1,700 square feet,
- increases the building footprint by 2,000 square feet; and
- increases the conservation area by about 1.78 acres.

As part of the 2008 changes, the coastal strand buffer, depicted in the 2005 plan between the east buildings and the Sound, was removed by the SFWMD in the ERP. Instead, a 35-foot-wide mangrove buffer is required in that location, which accounts for 1.39 acres of the 1.78-acre increase in "conservation/preservation" area.

The layout and building arrangement in the 2008 site plan is almost identical to that of the 2005 MDP. The pool/spa area is still located on the 1.6-acre upland, and three of the four buildings are situated along the east (Pine Island Sound) side of Bay Island. The fourth building is located adjacent to the amenity area, and nearer the Bryant Bayou channel. The mangrove fringe along the channel is now being preserved, and the filter marsh has been replaced with a large wet detention area, which lies between the mangroves and the east three buildings. Dry detention areas also lie adjacent to the east three buildings, and will provide additional treatment before waters are allowed to enter the mangrove forests along the south boundary of the developed area.

The drawbridge is still proposed at the narrowest part of the channel, but the internal roadway is not as long, does not extend as far to the south (into the mangrove forests) and has no southern cul-de-sac. The road runs along the east boundary of the large wet detention area, which should catch any run-off and contaminants from the roadway for treatment. Because the site is located in close proximity to the Charlotte Harbour Aquatic Preserve, an Outstanding Florida Water, additional run-off retention and water treatment is required to ensure that the water quality of the Harbor is not degraded by the project's run-off.

Applicant explained that, in addition to the preservation of the remaining 72+ acres in the Resort, they are being required to mitigate about 2+-acres of mangrove wetland impacts off-site - specifically, at the Little Pine Island Mitigation Bank. It was explained that the Water Management District considered the shading impacts of the bridge on the small area of seagrasses as wetland impacts, and required that they be mitigated, as well.

Acknowledging the public's arguments that the amount of mangrove wetland impacts are directly related to the proposed size of the units and building footprints, Applicant responded that the multi-million dollar cost of the drawbridge essentially mandates the size of the units. The question of unit size had arisen in the ERP DOAH hearings, and Applicant had presented an economic feasibility analysis in that proceeding to substantiate their "need" for the number and size of the units. (Applicant's 2008 Exhibit# 9a)

In the feasibility analysis, the estimated cost of the drawbridge was between \$5- and \$6-million, and the fair market value of each of the 24 units was estimated to be between \$1- and \$3-million. Those figures resulted from using the cost-per-square-foot amounts revealed in the recent sale and listing prices for "comparable" units in the Resort. (Applicant's 2008 Exhibit #9b; Pavelka, 2008 Transcript #1, pages 111 through 117) With that price range, the project, as designed, would generate a \$3.9 million profit. Reducing the unit size to 2,000

square feet or the number of units to 18, Applicant would experience a "net loss." (Maxwell, 2008 Transcript #1, pages 135 - 142)

It should be understood that these profit or loss figures are the direct result of the numbers provided by Applicant to their analyst. When cross-examined, the analyst responded that he did not do an independent verification of all the figures given to him by Applicant. For instance, he did not verify that the construction costs had been converted to 2008 dollars or were based on 2008 construction/materials costs; nor did he verify the property's cost basis that was given to him by Applicant. (Maxwell, 2008 Transcript #1, pages 177 - 179) (See also Uhle closing arguments discussing the ramifications of the use of that information, 2008 Transcript #2, pages 153 - 155)

As pointed out in the hearing, the footprint of each building was set at 10,400 square feet, with three 3-bedroom/3-bath units per floor accounting for 7,500 square feet of air-conditioned space. The remaining 2,900 square feet of the footprint would be taken up by the open decks of each unit, four sets of stairs, walkways across the front and rear of the buildings, and internal elevators. (Depew and Pavelka, 2008 Transcript #1, pages 38-40)

Applicant was requesting one Deviation in the 2008 MCP - and that was to allow the internal roadway to be 20 feet wide, instead of the 24-foot width required in the LDC. They explained that the narrower width will decrease the impervious area for the project, thereby preserving additional mangrove wetlands. They pointed out that the 20-foot width was consistent with the width of internal roadways within other development pods in the Resort, and would be utilized only by the traffic associated with the 24 dwelling units - since the drawbridge makes this a gated community.

#### **Staff's Analysis and Recommendation**

Lee County Staff recommended approval, with conditions, of the 2008 MDP, finding that it was consistent with the intent of the Lee Plan, the Land Development Code, and the 2002 Administrative Interpretation. They also found that the proposed development, as conditioned, would not be detrimental to the abutting environmentally sensitive areas, nor to the functions of the coastal natural resources.

Zoning Staff agreed with Environmental Sciences' (ES) Staff that Applicant was not restricted to a standard of "no wetland impacts" by the 2002 Administrative Interpretation, and that expanded development of the Harbour Pointe site was clearly envisioned in that document. They had found the request to be consistent with the Lee Plan in 2005, when it had larger unit sizes and wetland impacts, and they continued to find it "consistent," especially with the "reduction of the wetland impacts and the reduction of the unit size." (Richardson, 2008 Transcript #1, page 208)

In response to arguments relating to the requested unit size, Zoning Staff stated that the Resort has a mix of "transient lodging, some seasonal usage, and a small amount of full-time residential use." (2008 Staff Report at Page 9) They agreed with Applicant's statements that the unit sizes have been steadily increasing over the years - pointing out that the first hotel units ranged from 200 to 600 square feet, and earlier multi-family units ranged from 500 to over 1,000 square feet. Now, very large single-family homes are being constructed in the Resort close to the subject property. They found that the 2,500-square-foot units would not be the largest units at the Resort, and would be compatible with the nearby older dwelling

units, which range in size from 600 to 800 square feet, as well as with the newer larger units in the vicinity.

They found that the proposed plan of development was consistent with the "avoidance and minimization" criteria of Policy 114.1.2, through the reduced number of buildings and the clustering of those buildings at the north end of Bay Island. It was their opinion that the proposed use was appropriate at this location, and that the development would not adversely impact existing infrastructure in the Resort or on Captiva Island.

Zoning Staff recommended approval of the Deviation, with a condition, finding that the narrower aisle width for the internal roadway was consistent with the aisle widths of other development areas within the Resort, and would reduce the amount of impervious area on the site. They also found that the narrower width would not adversely impact the general public.

Environmental Sciences' (ES) Staff, in 2005 and 2008, recommended approval of the MDP amendment, asserting that the proposed development plan was the best plan for the continued well-being of the entire mangrove wetland system and the public's interests in protecting such environmentally sensitive lands. They explained that, in their review of projects, they try to ". . . balance out property rights, development and conservation of our resources" through the application of the Lee Plan Goals and provisions relating to the protection and preservation of the County's natural resources and environmentally sensitive lands. (Trebatoski, 2005 Transcript #2, Page 202) Their review includes making sure "that the proposed development is within the regulations . . . and . . . [will] ensure that the quality of life in Lee County is what the Board of County Commissioners directs. . ." (Trebatoski, 2005 Transcript #1, Page 168)

At the 2008 hearings, ES Staff further explained that their review for compliance with the Lee County and 2002 Administrative Interpretation was not "based on a scenario of no impact to the mangrove wetlands. . ." (Derheimer, 2008 Transcript #2, page 11) Instead, their compliance and consistency review was "based on how the proposed amendment to the site plan minimizes impacts to mangrove wetlands and provides a balanced site design more beneficial to the existing mangrove wetland system than the current approved site plan." (Derheimer, 2008 Transcript #2, page 11)

ES Staff disagreed with the interpretation of the public's experts that the 2002 Administrative Interpretation mandated "no impacts" to the mangrove wetlands with the development of the Harbour Pointe parcel. It was their understanding that the "Administrative Interpretation does not prohibit the applicant from amending the site plan and proposing wetlands impacts other than for the access road improvements, provided that the environmental analysis adequately evaluates the feasibility of such development in the wetlands." (Derheimer, 2008 Transcript #2, Page 10) It was their opinion that the Administrative Interpretation already allowed at least one acre of wetland impacts - impacts that would have been associated with the improvement of the existing shell road to conform to today's standards.

Explaining that they considered the emergency access (shell) road to be vested, pursuant to the 1992 County Attorney's letter, ES Staff had to determine the better plan for the long term quality and survivability of the mangroves. (Trebatoski, 2005 Transcript #2, Page 175) They questioned whether it was better to have the emergency access road - even developed under today's standards with culverts - separating the mangrove wetlands from the Sound for the entire length of the north portion of Bay Island, or to have a contained impact to a small

amount of mangrove wetlands, and the remaining 72+ acres of mangrove wetlands under a perpetual conservation easement.

ES Staff, Applicant's experts, and the members of the public agreed that the mangroves on Bay Island were necessary for the protection of that coastline and structures during hurricane and tropical storm events. Staff believed the removal of the shell roadway and restoration of the mangroves along that roadway would strengthen the mangrove system, while also enabling the ecosystem to again fulfill its other ecological and environmental functions.

As was testified to in both the 2005 and 2008 hearings, the removal of the shell road, Applicant's voluntary restoration of the affected mangrove areas, and the preservation of the balance of the mangrove wetlands on Bay Island and Captiva Island were key factors in ES Staff's recommendation of approval of this development request. They found that the following "factors" make the requested development consistent with the Lee Plan:

- clustering the development and access bridge road to the north tip of the Island;
- preservation of the entire 1.3-acre rare and unique tropical hardwood hammock;
- 71.47 of 74.08 acres of wetlands preserved on site;
- a conservation easement dedicated to the state and Lee County which strictly limits activities to restoration, creation, enhancement, maintenance and monitoring; and
- the 1.19 acres of mangrove buffer with limited trimming conservation easement. (Derheimer, 2008 Transcript #2, pages 29 -30)

ES Staff also found that Applicant had submitted all the necessary surveys and assessments required in the Lee Plan regarding the protection and/or preservation of flora, fauna and environmental resources. (Derheimer, 2008 Transcript #2, pages 31-34)

In the face of the public's arguments and allegations that Applicant's proposed mitigation did not offset the loss of the functions of the mature mangroves, ES Staff advised that they cannot independently assess the adequacy of the mitigation issue. The determination of whether proposed mitigation is sufficient to offset the wetland impacts is done by state and federal agencies during an Environmental Resource Permit (ERP) review. Under the Lee Plan provisions, once the Water Management District has issued the ERP for a project, ES Staff is prohibited from undertaking an independent review of the wetland impacts, and is required to incorporate the terms and conditions of state permits into the County's permits. (Lee Plan Policy 114.1.2)

ES Staff explained, however, that the County was not required to blindly accept whatever the state reviewing agency finds and determines with regard to a proposed development. They pointed out that they are actively involved in the Water Management District's review process, and conduct their own review of the request and provide the Water Management District with their comments. ES Staff's comments and conditions are based on their review of the project's consistency with the provisions of the Lee Plan. (Derheimer, 2008 Transcript #2, pages 12-17) It was their professional opinion that the intergovernmental review process worked out very well in this case, because the "final approved South Florida Water Management District ERP . . . site design mimics ES staff's [2004-05] recommendation with even further reduction in wetland impacts than [was] recommended by Environmental Staff." (Id, page 17)

Ms. Derheimer found that the ERP's "consistency with the Lee County environmental staff's [2005] recommendation illustrates how Lee County goals, objectives and policies were incorporated into the [ultimate] site design. . . ." (Id, page 19) It was ES Staff's opinion that their 2004/05 recommendations were consistent with the Lee Plan requirement that wetland impacts be minimized, and that the consistency of the ERP with those recommendations provided "verification of [the] minimization of wetlands [impacts]." (Id, page 19)

ES Staff understood that the Water Management District's standard of review for avoidance and minimization of mangrove impacts and mangrove protection is different from the County's. The Water Management District's standard was expressed as "to the extent practicable," while the County's standard for Captiva wetlands was expressed as "to the greatest extent possible." They believed, however, that the difference(s) resulting from the application of these two standards, in this particular case, was really minor. It was their opinion that the proposed project - with all the preservation and mitigation set out in the ERP - provided better protection to the overall mangrove forests and their functions, and, thereby, better protection to the public's interests - than did following the plan of development "approved" in the 1985/2002 MDPs.

### Public Input

Numerous Captiva residents, a representative from the US Fish and Wildlife Service, and representatives from six other conservation and special interest groups spoke at the public hearings.<sup>3</sup> Although several residents spoke in favor of the request, the overwhelming majority of the testimony and evidence presented by the public was highly critical of the request, particularly the need for the "extremely large" dwelling units and the proposed mangrove destruction.

The public asserted that Staff failed to adequately consider or address a number of issues that the public felt formed a solid basis for denial of this request. In the 2005 hearings, at least three of the representatives for special interest groups and the US Fish and Wildlife Service Officer were qualified as experts in the fields of wetland biology and ecology, and in the maintenance and restoration of mangrove wetlands. A couple of those "experts" also spoke at the 2008 hearings. Several of the other witnesses had experience with mangrove and wetland management or restoration projects, but did not ask to be qualified as experts. All, however, believed that the destruction of these wetlands was unnecessary, would be detrimental to this critical environmentally sensitive resource (mangrove system) and its collateral functions, and, if approved, would establish a bad precedent for future development on Captiva and other barrier islands.

It should be noted that the opinions and testimony of the public's experts and several lay witnesses contradicts the findings and opinions of Lee County ES Staff and Applicant's environmental expert. For comparison purposes, the testimony of the various experts can be found in the following Transcripts and pages.

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<sup>3</sup> The six special interest groups objecting to the mangrove destruction included:  
Captiva Civic Association                      Sanibel-Captiva Conservancy Found.  
Conservancy of SW Florida                      Sanibel-Captiva Audobon Society  
Calusa Group of Sierra Club                      Responsible Growth Management Coalition

NOTE: Although the testimony in 2005 related to 4+acres of wetland impacts, which have now been reduced to 2.61 acres in the 2008 plan, the principles and basis for the arguments are still valid.

Expert	2005 Transcripts	2008 Transcripts
Applicant: Kevin Erwin  Michael Frankenberger	T#1 - pages 109-147 T#2 - pages 12-30 T#3 - pages 45 -90	T#1 - pages 41-79  T#2 - pages 184 - 200
Staff: Kim Trebatoski  Susie Derheimer	T#1 - pages 167-187 T#2 - pages 198-210	T#2 - pages 5 - 39
Captiva Civic Ass'n Rae Ann Wessel	T#2 - pages 61-106; 154-198	T#2 - pages 39 - 117
Conservancy - SW FL David Ceilley  Stephen Bortone  Nicole Ryan	T#2 - pages 112 - 127  T#2 - pages 127 - 137	T#1 - pages 254 - 274
US Fish & Wildlife Rob Jess  Paul Tritaik	T#1 - pages 233-244	T#1 - pages 91-100

The public's first and most repeated argument was that the loss of the mature mangrove wetlands was inconsistent with the Lee Plan provisions requiring the protection and preservation of natural resources and environmentally sensitive lands. They asserted the importance of protecting mangrove wetlands was recognized by Lee County as far back as the 1970's, when Lee County prevailed in the The Estuaries v. Troutman law suit. That law suit prevented a developer from constructing a project in mangrove wetlands. They stressed that the outcome of that law suit set the standard for barrier island and coastal development in Lee County, and was the basis for many of the Lee Plan provisions requiring the protection and preservation of mangroves and other critical environmentally sensitive areas.

The public's experts disagreed with Staff's finding that this project was consistent with the "avoidance and minimization" provisions of Policy 114.1.2, asserting that Applicant obviously had not made "every reasonable effort" to "avoid or minimize adverse impacts" on the mangrove wetlands. They conceded that Applicant clustered the 24 units, but argued that the building footprints clearly exceeded the upland acreage available for development, thereby ensuring that the development would have to go into the mangroves. In their

opinions, if every "reasonable effort" had been made, Applicant would have reduced the size of the units and building footprints to what had been allowed in the 1985/2002 plans, and would have moved those six additional units to other upland areas within the Resort.

They also pointed out that Applicant had not even located the residential buildings on the 1.6-acre upland, choosing instead to use the only upland area for the large pool, spa and deck amenity. They believed that reducing the size of the units to the 600 square feet, as approved in the 2002 MDP, and moving them to that upland area would allow Applicant to avoid most, if not all, of the impacts on the adjacent mangrove wetlands. They asserted that the unit size was the very factor that created the need for the encroachment into the adjacent wetlands. They understood Applicant's claims that they needed the revenue to build the drawbridge, but the public believed that Applicant would receive sufficient monies from 24 smaller units to pay for that bridge.

They stated that Applicant's minimal reduction in the unit size and building numbers, and the elimination of the tennis courts and filter marsh did not constitute "minimization" of impacts envisioned by the Lee Plan. It was their opinions that "minimization" only occurs when it is clear that the adverse impacts simply cannot be avoided and the encroachment is as small as possible. They pointed out that the Hearing Examiner, in the 2005 Recommendation, had limited the unit sizes to 1,300 square feet each and the building footprints to a maximum of 2,600 square feet. If the BOCC had approved that reduction, it would have resulted in an overall wetland impact of about 1.5 acres, with a net wetland impact of only 1/2-acre - which they believed was consistent with the intent of the minimization criteria.

They asserted that Applicant's encroachment was not as small as possible, particularly in light of the large size of the units, building footprints and the addition of the six unallocated units to this small development area. Instead, they believed that Applicant was "maximizing" this development, allegedly because these were the last units available for development in the Resort.

Further, the public argued that Applicant's claims of minimization through using 4-plex or 6-plex buildings - and Staff's acceptance of that claim - were inconsistent with the clear intent of the "avoid or minimize" requirement. First, Applicant was not entitled to 24 2,500-square-foot+ units; they were only entitled to 18 600-square-foot hotel-type units for this site. Second, Applicant did not have to put in a large pool and spa amenity on the only upland area of the site; they believed these unit owners could share the amenities of the other residential complexes in close proximity to this property. If the pool amenity was eliminated, the residential buildings could be moved further northward onto the 1.6-acre upland area, which would decrease significantly the project's encroachment into the mangroves.

They asserted that destruction of mature mangroves on Bay Island would remove the barrier that would protect the Resort residences and other structures from the storm surge and high winds associated with a hurricane or tropical storm. A review of the Resort buildings before and after Hurricane Charley (August 2004) clearly demonstrated that the worst damaged structures were found in the areas where the mangroves had all been removed. The public pointed out that the mangroves on and around Bay Island suffered severe damage because they received the full force of Hurricane Charley's winds and waves. However, those mangroves actually protected some of the dwelling units in the Harbourside and Marina Villas, which are located to the west of the mangrove forests. They asserted the destroyed and damaged mangroves areas are slowly coming back and that the regeneration of all those damaged mangroves should be protected - not exploited.

A fourth element of their argument was that the mangrove wetlands should be protected because of their other valuable functions. Mangrove destruction would also adversely affect water quality, animal habitat, and the reproduction of fishes and other marine species that began life in the mangrove wetlands. As testified to by the public's experts and lay witnesses:

. . . the roots of mature mangroves provide habitat for fish, crustaceans and mollusks as well as securing the shoreline while the leaf litter provides food for microorganisms at the bottom of the estuarine food chain. Thus, the loss of mangroves is associated with adverse impact to support commercial fisheries of economic value to Lee County. (Jones, 2005 Transcript #1, page 228)

. . . Mangroves are the beginning of a food chain in the estuaries, and without them, we lose 90 percent of the creatures in the sea. 90 percent of the creatures in our oceans are dependent on spending part of their lives in an estuary and mangroves are the most important ingredient. (Langman, 2005 Transcript #2, page 233)

Now, there's a tremendous amount of benefits to mangrove systems. Mangrove forests are second only to tropical rain forests in the amount of detritus they may produce each year . . . Detritus is the decaying mixture of leaves, twigs, and et cetera that breaks down to become food for micro species which in turn becomes food for commercially important fish and crustaceans as mentioned. . . Mangrove roots filter water. They maintain water quality and clarity . . . literally hundreds of species of birds are dependent in one form or another upon the mangrove system. . . as roosting and nesting structures. . . 75 percent of all game fish in southwest Florida are dependent upon them . . . (Jess, 2005 Transcript #1, pages 236-238)

One acre of mangroves produces between 5,000 and 10,000 fish in a given year. Based upon the Lee Plan's goal to preserve and manage fisheries resources, . . . these 2.61 acres of mangrove wetlands . . . could produce somewhere between 13,000 and 27,000 fish annually if that formula is applied . . . (Ryan, 2008 Transcript #1, Page 264)

In both the 2005 and 2008 hearings, Staff, Applicant and the public's experts all agreed that, in spite of its damaged state, the existing mangrove forests on Bay Island were still performing its other functions, and were a viable, functioning ecosystem. They also agreed that the removal of the shell road - whether by natural causes or by Applicant's actions - would enhance the fulfillment of those functions.

The public wants the requested amendment denied, arguing that the destruction of the mangroves at the north end of Bay Island should not be allowed as an "exchange" for Applicant's removal of the shell road. They explained that Applicant did not have to remove the shell road; that, if it was just left alone, it was only a matter of time before the natural tidal flows of the Sound would remove the roadway. They argued that a walk down the shell road clearly reveals that wave action is already "over-topping" the shell road in many places and would eventually wash it out - without any action by Applicant. (Lindblad, 2008 Transcript #1, pages 238 -240)

Although Applicant had proposed entering the mangroves to remove the debris and dead mangrove trees as part of the mitigation program, the Water Management District restricted such clean-up actions to only a small area (about 10 acres) immediately abutting the proposed development site. Clearly, the Water Management District agreed with the public's assertions that entering the mangrove wetland was deleterious to the continued health of the wetlands, and that the leaf litter, debris and tree trunks would eventually decompose and provide food for the microorganisms in the estuarine food chain.

Despite their arguments that 2.61 acres of wetlands impacts were too much, the public's experts were unable to state any amount of wetland impact that was acceptable to them for this project. (Wessel, 2008 Transcript #2, pages 114-116)

One last argument raised by several of the special interests groups was that Policy 13.1.12 was not in effect in 2005, and was not reviewed by the Hearing Examiner or Staff then, but is clearly applicable to the facts of the case today. That Policy was adopted just after the 2005 hearings, and mandates that mangroves on Captiva Island be protected to the "greatest extent possible." That standard differs from the "greatest extent practicable" standard that was applied by the Water Management District, and was adopted in addition to the generalized mangrove protection language of Policy 114.1.2.

It was argued that:

... the District's Basis of Review for permits does not contain a requirement to protect mangroves to the greatest extent possible which is the county standard. It [the Basis of Review] only requires that the District consider whether the applicant has implemented practicable design modifications to reduce or eliminate adverse wetland impacts. Implementing these practicable alternatives is not the same thing as protecting mangroves to the greatest extent possible. It's simply a different standard ... (Ryan, 2008 Transcript #1, pages 261)

In determining whether a proposed modification is practicable, consideration shall also be given to the cost of the modification compared with the environmental benefit it achieves. Now, I think the Hearing Examiner can see that this is an elastic concept. It's a little bit difficult to pin down. It clearly involves elements of balancing of economic concerns, technological concerns, and so on. It's our position that those kinds of balancing concerns ... are not found in the word possible and so this means something different than possible. ... (Uhle closing argument, 2008 Transcript #2, page 127)

Applicant responded to the "practicable" and "avoidance and minimization" arguments put forth by the public by stating:

... the overriding criteria in avoidance and minimization throughout the ERP process is the review of wetland and associated environmental impacts of the project and the project can have a no net loss of wetland functions. ... [this was accomplished by] a combination of wetland reclamation, making mangroves out of the road, enhancing the hydrological flushing and connections with Pine Island Sound, preserving and long-term management of the preservation areas, and, ... the preservation of the mound site which are uplands. (Frankenberger, 2008 Transcript #2, pages 187-188)

Applicant also pointed out that this project has a 2+-acre "functional gain" in wetlands - under the ERP, with the required off-site mitigation at the Little Pine Island Mitigation Bank. They conceded that projects on Captiva are held to a higher level of scrutiny where mangrove impacts are involved, but argued that the higher level of scrutiny was not intended to be interpreted in such a manner that it would prevent anyone from even touching the mangroves. They believed that the intent of Policy 13.1.12 was met by the overall preservation of the 72+ acres of wetlands and the 2+-acre "functional gain." (Depew, 2008 Transcript #2, pages 202-205) It was their opinion, which they believed was shared by the Water Management District in its issuance of the ERP, that the overall mitigation required for the loss of the 2.61 acres of mangroves will actually overcompensate for that loss.

### Hearing Examiner Analysis

The undersigned Hearing Examiner, after having reviewed the entire 5-day hearing record and having conducted two site visits (2005 and 2008) to the subject property, concurs with Staff's recommendation of approval, as conditioned. She finds that the request, as conditioned herein, is consistent with the intent and provisions of the Lee Plan and with the 2002 Administrative Interpretation. It is her opinion that the request, as conditioned herein, will be compatible with the surrounding development, and will not be detrimental to the public health, safety and welfare, or the public's interests.

While it is undisputed that the loss of the mangrove wetlands will have an effect on the ecological functions in the area, for this request to be denied, that loss must be found to outweigh the potential benefits that will result from restoring full function to the 30+ acres of wetlands on the north end of Bay Island and from conserving the balance of the 72+ acres of mangrove wetlands owned by Applicant. ES Staff, in making their recommendation, weighed that anticipated loss against the anticipated increase in ecological and environmental benefits, and found that the removal of the shell road will re-establish the hydrological connection between the 30+ acres of mangrove wetlands and the Pine Island Sound. That will allow daily tidal flushing from the Sound throughout these mangroves, which has not been allowed to occur since the 1980's when the shell road was constructed. The daily tidal flushing will restore and enhance the functions of those mangroves to what they would have been, if the roadway had not been constructed. In addition, the preservation of the 72+ acres of mangrove wetlands will ensure the future viability and survivability of those plants and all the other plants and animals resulting from or associated with the wetlands. Thus, the overall benefit to the environment and coastal ecological functions far outweighed the minimal loss of the functions associated with 2.61 acres of mangrove wetlands.

As such, the Hearing Examiner concurs with ES Staff's determination that the prospective loss of 2.61 acres of mangroves is far outweighed by the prospective benefits to be gained by the restoration of tidal flushing to 30+ acres of mangrove wetlands, and the conservation of 72+ acres of mangroves.

Although Hearing Examiner shares the public's concerns about the rather large size of the units and building footprints, she cannot support the public's arguments that "no wetland impacts" were allowed or considered for this parcel. The 2002 Administrative Interpretation clearly stated the possibility that the Harbour Pointe project would expand. All Applicant was required to do was to provide a feasibility study of the mangrove impacts that was acceptable to the County and other governmental entities. In addition, the 2002 Administrative Interpretation - based on the 1985/2002 MDP - clearly showed an area of development adjacent to the south side of the Harbour Pointe site, which was designated for three holes

of a golf course. It was stated, in the 2004 hearing, that those three holes would have covered between five and 6.5 acres of the mangrove wetland - impacts that greatly exceed what is being proposed in this request. (Paveika, 2005 Transcript #3, page 26)

With regard to the "demonstrated need" for the 2,500-square-foot units, Lee County does not accept nor rely on data in a market analysis in its review of a rezoning request. The Hearing Examiner points out, however, that the Water Management District and the DOAH hearing officer found that data persuasive in their analyses of the request, and that the ERP was ultimately issued, at least partially in reliance on that data. The public questioned the accuracy of the data contained in that analysis, but provided nothing, beyond argument, to rebut the assumptions or numerical basis contained in that analysis. Even though the public was unable to disprove Applicant's claims regarding the economic feasibility of the proposed project, the marketing information was not utilized by the Hearing Examiner in making her decision.

The main issue in this case was whether the proposed destruction of 2.61± acres of mature mangroves, on a barrier island just off Captiva Island, is consistent with the provisions of the (renumbered) Lee Plan Goals 13, 104, 107, and 114. These provisions relate to the protection of mangroves and mangrove wetlands in Lee County and on Captiva Island, development of coastal areas and barrier islands, protection of natural resources, environmentally sensitive lands, natural habitats, coastal planning areas, wetlands, and estuarine water quality and economic productivity.

The following are undisputed facts in this case:

- The 2002 Administrative Interpretation establishes the "vested" development rights in the South Seas Plantation Resort Master Development Plan (MDP).
- Harbour Pointe is "vested" for 18 executive hotel units - having a unit area of about 600 square feet.
- Six units are being added to those 18 units, through a private agreement with the other property owner (Meristar) in the Resort. Those six unit constituted the only remaining unallocated, undeveloped units in the Resort MDP.
- Harbour Pointe development plan originally consisted of a 1.6-acre upland area at the extreme north end of Bay Island, a spoil area which resulted from the dredging of the marina and the Bryant Bayou channel.
- The mangrove impacts from the 12- to 20-foot-wide shell road along the east side of Bay Island were "vested" under the 2002 Administrative Interpretation.
- The 1985 MDP and the 2002 Administrative Interpretation depict three holes of a golf course (5 to 6.5 acres) on the mangrove wetlands abutting the south side of the Harbour Pointe uplands area.
- Waves from Pine Island Sound do overtop the shell road, and, if the road is not continually filled, would eventually erode it away, thereby allowing the natural flushing of those mangrove forests on the north portion of Bay Island.
- The mangroves on Bay Island are flourishing/regenerating since the destruction/damage caused by Hurricane Charley in 2004.
- In addition to providing protection from winds and storm surge for barrier islands, mangroves have numerous other ecological and estuarine functions, which will be impacted or endangered by the loss of the 2.61 acres of mangroves.

- With this request, about 72 acres of other mangrove wetlands will be restored, preserved and placed in a conservation easement under the authority of Lee County and other appropriate governmental agencies.

Having reviewed the entire record and, despite having some reservations about the proposed size of the 24 units and building footprints, the Hearing Examiner finds that the request, as conditioned, is consistent with the following provisions of the Lee Plan: (the content of these provisions is set forth on **Exhibit C** attached hereto for ease in reference).

<u>Goals</u>	<u>Objectives</u>	<u>Policies</u>
104	2.1 & 2.8	2.1.2
107*	13.1	5.1.2
108*	104.1*	13.1.5* & 13.1.12
112*	107.1* & 107.2*	104.1.1*
113	113.1*	107.1.1* & 107.1.2
114*	114.1	107.2.3 & 107.2.4*
115*	115.1	107.2.8* & 107.2.10
121*		107.2.13
		108.1.2
		113.1.5
		114.1.2
		115.1.2 & 115.1.3

The Hearing Examiner also finds that, if the BOCC approves this request, as conditioned, its actions would be specifically consistent with the above provisions marked with an "\*."

The second issue in this case was initially raised by the Hearing Examiner, who questioned the force and effect the issuance of the ERP by the Water Management District had on Staff's review and, ultimately, the Hearing Examiner and BOCC's decisionmaking authority, in light of Lee Plan Policy 114.1.2. That Policy prohibits "the County" from undertaking an independent review of wetland impacts, once the development has been authorized by DEP or the Water Management District. The Hearing Examiner questioned if this Policy had been interpreted to mean that Staff, the Hearing Examiner and the BOCC were expected to "rubber stamp" the Water Management District's analysis in the issuance of the ERP, without having reviewed the request to ascertain that the request, as conditioned by the ERP, was consistent with the provisions of the Lee Plan.

ES Staff testified that they are intimately involved in the Water Management District's review and analysis of the development request. Under the review processes of the Water Management District, Staff is asked to review the request and to provide their analysis, conditions and recommendations to the Water Management District for inclusion in the ERP. Thus, Lee County - via ES Staff - already had an opportunity to review and condition the request - so that it would be consistent with the Lee Plan provisions, before the ERP was issued.

Having determined that the County is not required to "blindly" accept the Water Management District's assessment/approval of the project, the question then arose whether the Water Management District's basis of review is consistent with the County's adopted standard for protecting Captiva mangroves. The public argued that the approved ERP was based on lower

standards of review and that Hearing Examiner and BOCC can and have the obligation to review this case under that higher standard.

Section 4.2.1 of the booklet entitled "Basis of Review for Environmental Resource Permit Applications" (Uhle Exhibit #3, 2008 hearing) relates to the elimination or reduction in wetland impacts. That Section mandates that

. . . . Any adverse impacts remaining after practicable design modifications have been implemented may be offset by mitigation as described in subsections 4.2 - 4.3.9. An applicant may propose mitigation, or the District may suggest mitigation, to offset the adverse impacts caused by regulated activities as identified in sections 4.2 - 4.2.8.2. To receive District approval, a system cannot cause a net adverse impact on wetland functions or other surface water functions which is not offset by mitigation. (Emphasis by Hearing Examiner) (see also: Uhle argument, 2008 Transcript #2, pages 124-128; and Depew, 2008 Transcript #2, pages 187-194, 205)

Subsection 4.2.1.1 then establishes the following "avoid or minimize" standard for reviewing projects with proposed impacts:

Except as provided in subsection 4.2.1.2, if the proposed system will result in adverse impacts to wetlands functions and other surface water functions such that it does not meet the requirements of sections 4.2.2 through 4.2.3.7, then the District in determining whether to grant or deny a permit shall consider whether applicant has implemented practicable design modifications to reduce or eliminate such adverse impacts.

The term 'modification' shall not be construed as including the alternative of not implementing the system in some form, nor shall it be construed as requiring a project that is significantly different in type or function. A proposed modification which is not technically capable of being done, is not economically viable . . . is not considered 'practicable.' A proposed modification need not remove all economic value of the property in order to be considered not 'practicable.' Conversely, a modification need not provide the highest and best use of the property to be 'practicable.' In determining whether a proposed modification is practicable, consideration shall also be given to the cost of the modification compared to the environmental benefit it achieves.

Subsection 4.2.1.2 then sets out the following instances when the District will not require design modifications:

- (a) the ecological value of the function provided by the area of wetland . . . to be adversely affected is low based on site specific analysis using the factors in subsection 4.2.2.3, and the proposed mitigation will provide greater long term ecological value than the area of wetland . . . to be adversely affected, or
- (b) the applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long

term ecological value than the area of wetland . . . . to be adversely affected.

The public argued that the Water Management District 's "avoid and minimize" review and protection criteria constitute a lower standard than that required in Lee Plan Policy 13.1.12. They dubbed it as "to the extent practicable" versus "to the greatest extent possible." Under the Water Management District's review, economics and mitigation are accepted as definitive bases in the finding of "practicable," whereas, under Lee County review, economics is neither accepted nor considered as a factor in the decision making. They asserted that the ERP standard is inconsistent with the intent of Captiva standard of review.

They argued that it is clear from reading Policy 13.1.12 that the BOCC and Captiva community intended a higher standard of review to be applied in cases where Captiva mangroves are being impacted. They wanted the Hearing Examiner to find that the ERP was inconsistent with the intent of Policy 13.1.12. They asserted that Policy 13.1.12 imposed a higher burden of proof and that Applicant had not met that burden, because they refused to significantly reduce the size of the 24 units and the building footprints, which could have eliminated the encroachment into the mangrove wetlands.

They submitted copies of the BOCC adoption meetings (Uhle Exhibit #1, 2008 hearing) for Policy 13.1.12 to emphasize the strength of their community's resolve to protect their mangroves, and to assist the Hearing Examiner in determining the "legislative intent" of that requirement. They urged the Hearing Examiner to review and compare both standards, and to make a finding that the County's standard imposed greater requirements, which had not been met in the ERP review.

Under the principles of statutory construction, the first step is to interpret the provision through its "clear meaning." Only if the meaning or intent is vague or ambiguous, does the reader then resort to an interpretation of the legislative intent. However, while the Water Management District does define "practicable" and establish standards for its determination, Policy 13.1.12 neither defines, explains nor provides guidelines or approval criteria for its determination of compliance.

As part of the "clear meaning" interpretation, a general dictionary can be used to ascertain the definition of key words. The Hearing Examiner consulted two dictionaries to define the terms "practicable" and "possible," finding that:

Webster's Ninth Collegiate Dictionary, copyright 1991, Merriam-Webster, Inc.,  
defined

Possible - being within the limits of ability, capacity, or realization; being something that may or may not occur" . . . . *Syn* - possible, practicable, feasible. POSSIBLE implies that a thing may certainly exist or occur given the proper conditions; PRACTICABLE implies that something may be easily or readily effected by available means or under current conditions; FEASIBLE applies to what is likely to work or be useful in attaining the end desired.

Practicable - possible to practice or perform; capable of being used. . . . *Syn* PRACTICABLE applies to what has been proposed and seems feasible but has not been actually tested in use; *Syn* see in addition POSSIBLE.

Black's Law Dictionary, Fifth edition, copyright 1979, West's Publishing Co.,  
defined

Possible - Capable of existing, happening, being, becoming or coming to pass; feasible, not contrary to nature of things, neither necessitate nor precluded; free to happen or not; . . . It is also sometimes equivalent to "practicable" or "reasonable" as in some cases where [action] is required to be taken "as soon as possible."

Practicable, practicably. Practicable is that which may be done, practiced, or accomplished; that which is performable, feasible, possible; . . .

Clearly, both a legal and a general dictionary find the two terms to be synonymous, which does not resolve the issue of whether the ERP is inconsistent with Policy 13.1.12.

The Hearing Examiner notes that to make a finding of inconsistency, she must also consider the requirements of Policy 13.1.12 in conjunction with other Lee Plan provisions, particularly those established in Policy 114.1.2. As noted above in this discussion, that Policy prohibits - under State law (F.S. 163.3184) - the County from undertaking an independent review of wetland impacts specifically authorized by DEP or SFWMD. Further, that Policy requires Lee County to incorporate and enforce the terms and conditions of those State permits, some of which were provided to the Water Management District by ES Staff, after their review of the project under the County's regulations and Lee Plan.

Staff believed that the protection/preservation of 72 acres of mangrove wetlands could be deemed to be "to the greatest extent possible" as it would prevent Applicant or any other potential owner from attempting to obtain development rights to those mangroves from the 1973 plan of development. They believed that the loss of the 2.61 acres was minimal when compared to the extensive, long-term environmental, ecological and public benefits to be garnered from the permanent preservation of 72 contiguous mangrove wetlands.

Since ES Staff has already made the finding that the project, as conditioned, and the ERP, as conditioned, are consistent with the intent of Policy 13.1.12, and since that Policy does not contain any definitive criteria or guidelines for use by the Hearing Examiner in making a different determination of consistency, the Hearing Examiner accepts Staff's findings and decision.

Having reached these conclusions, the undersigned Hearing Examiner recommends that the BOCC approve the request, as conditioned herein.

**V. FINDINGS AND CONCLUSIONS:**

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the Applicant has proved entitlement to this request, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, the 2002 Administrative Interpretation, and other applicable codes or regulations.

B. That the requested amendment, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request and set forth in the 2002 Administrative Interpretation.

C. That the density and land development regulations are established in the 2002 Administrative Interpretation, and the requested use, as conditioned, is consistent with those regulations, and is compatible and appropriate with the existing uses in the surrounding area.

D. That approval of the request, as conditioned, is consistent with the traffic and infrastructure impacts authorized in the 2002 Administrative Interpretation.

E. That the request has received the South Florida Water Management District Environmental Resource permit and, as conditioned, will not adversely affect environmentally critical areas and natural resources.

F. That the recommended conditions to the Master Concept Plan are reasonably related to the impacts anticipated from the proposed development, and, with other regulations, will provide sufficient safeguard to the public interest.

G. That the approved Deviation, as conditioned, will enhance the objective of the proposed development, and will promote the protection of the public health, safety and welfare.

H. That urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

**VI. LIST OF EXHIBITS:**

**A. EXHIBITS FROM 2008 HEARINGS:**

**STAFF'S EXHIBITS**

- 1 Proposed Condition, from Susie Derheimer, dated July 30, 2008(8.5" X 11")
- 2 Aerial photograph with subject property highlighted in red, prepared by Lee County DCD, mapped July 28, 2008(color)(8.5" X 11")(24" X 36")
- 3 Aerial photograph with development area marked in red, prepared by Lee County DCD, mapped January 28, 2008 (color)(8.5" X 11") (24" X 36")

- 4 Letter from Donna Marie Collins to Rich Joyce, dated June 11, 1992, in regards to service road, (two pages)
- 5 Memo from Ed Cronyn to Wayne Daltry and Roland Ottolini, dated January 11, 2008 (one page)
- 6 Environmental Plan reducing wetland impacts and site acreage, marked with red marker, prepared by Johnson Engineering, dated June 28, 2004 (11"X17")
- 7 Greenways Trail Segments Plan Lee County Parks & Recreation, last revised January 30, 2006 (color)(11"X17")
- 8 Derheimer Testimony, (eight pages) (8.5"X11")
- 9 Order, Coastal Cravens, LLC vs. Lee County, Florida, Order Granting, in part, and denying, in part, Appellee's motion to dismiss, dated January 16, 2008, (two pages)

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

#### **APPLICANT'S EXHIBITS**

- 1 Memorandum from Pavese Law Firm, dated July 29, 2008, 24 hour notice, (three pages) (8.5" X 11")
- 2 Rezoning Analysis, prepared by Morris-Depew & Associates Inc., (bound book)
- 3a Master Concept Plan, prepared by Johnson Engineering, dated May 2008, four pages (24" X 36")[SUPERCEDES ORIGINAL APPLICANT'S EXHIBIT 8]
- 3b Drainage Plan, prepared by Johnson Engineering, dated May 2008 (11" X 17")
- 4 Site Plan Comparison, prepared by Kevin L. Erwin Consulting Ecologist, dated July 29, 2008 (11" X 17")
- 5 Map regarding location of boat facilities and seagrass, prepared by Kevin L. Erwin Consulting Ecologist, dated July 29, 2008 (color) (11" X 17")[SUPERCEDES ORIGINAL APPLICANT'S EXHIBIT 22]
- 6 Reduced Site Plan Exhibit, prepared by Kevin L. Erwin Consulting Ecologist, dated July 29, 2008 (color) (11" X 17")
- 7 Aerial photograph with graphic site design and preserved areas, prepared by BSSW Architects Inc., dated June 30, 2008 (color)(11" X 17") (24" X 36")[SUPERCEDES ORIGINAL APPLICANT'S EXHIBIT 4]
- 8 Resume for W. Michael Maxwell, MAI, SRA, for Maxwell & Hendry Valuation Services, Inc., (two pages) (8.5" X 11")
- 9a Economic Study Composite, prepared by Maxwell & Hendry Valuation Services, Inc., dated May 4, 2007

- 9b Back up document for the Economic Study, prepared by Maxwell & Hendry Valuation Services, Inc.
- 10 Resume for Andrew D. Tilton, Senior Engineer for Johnson Engineering Inc.(8.5" X 11")
- 11 Resume for George C. Patton, P. E., M.S.C.E., Bridge Department Manager / Project Manager / Senior Bridge Engineer for E. C. Driver & Associates (8.5" X 11")
- 12 Bridges Conceptual Sketches General Plan and Elevation, prepared by E.C. Driver & Associates Inc., (four pages) (11" X 17")
- 13 Compatibility Study with graphics superimposed, prepared by BSSW Architects Inc., dated July 2008 (color)(11" X17") [SUPERCEDES ORIGINAL APPLICANT'S EXHIBIT 9]
- 14 Proposed Bridge Schematic, prepared by BSSW Architects Inc., dated July 2008 (color)(11" X 17")[SUPERCEDES ORIGINAL APPLICANT'S EXHIBIT 11]
- 15 Legal Description and easement for entrance road, prepared by Steven C. Hartsell, Esquire, Pavese Law Firm, (nine pages) (8.5"X11")
- 16 Composite consisting of ERP for entrance road.
- 17 Chadwick Site Proposed Trail Network, prepared by Torrence, dated January 16, 2006 (color)(8.5"X11")
- 18 Resume for Dr. Harvey H. Harper, III, P.E. , President of Environmental Research & Design, Inc., 26 pages
- 19 Harper Presentation, dated August 7, 2008, (four pages)
- 20 Resume for Michael J. Frankenberger, Senior Ecologist for Kevin L. Erwin Consulting Ecologist, Inc., (two pages)
- 21 Aerial of Harbour Pointe at South Seas Resort Impact Map, prepared by Kevin L. Erwin, dated January 13, 2006 (color)(11"X17")
- 22 Michael J. Frankenberger presentation, dated August 7, 2008, (12 pages) (8.5"X11")
- 23 Memo from Morris-Depew, dated August 6, 2008, (five pages) (8.5"X11")
- 24 Composite consisting of 403.9324, F. S., and list of Delegated Counties, (three pages (8.5"X11"))
- 25 Closing Memorandum from Steven C. Hartsell, Esquire, Pavese Law Firm, dated August 7, 2008, (seven pages) (8.5"X11")
- 26 Email & Memorandum from Steve Hartsell, dated August 12, 2008, re: Identification of 2005 Hearing Exhibits that have been superceded by 2008 Hearing Exhibits, and revised Conditions (5-page document) [post hearing submittal]

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

### **OTHER EXHIBITS**

#### **CCA / Uhle**

- 1 Composite consisting of Approved Minutes of 060105CP, pages 369-381, Draft Minutes of 101205CP, pages 706-712, Minutes Report Local Planning Agency, dated April 25, 2005, 21 pages, CPA2004-09 Goal 13-Captiva BOCA Sponsored Amendment to the Lee County Comprehensive Plan, dated October 12, 2005, Captiva Community Panel minutes, dated April 20, 2005, (three pages)
- 2 West law, 403.9324, F. S., (two pages) (8.5"X11")
- 3 Basis of Review for Environmental Resource Permit Applications, dated July 22, 2007, pages 9-48 and Table of Contents, (three pages)

#### **Price**

- 1 Letter of authorization from Land's End Village Condominium Association, Inc. to represent 64 owners of Land's End Village on Captiva Island, undated, with attached listed of owners names & STRAP numbers (multiple pages)(8.5" x 11")

#### **Ryan**

- 1 Resume for Nicole Ryan, Governmental Relations Manager for Conservancy of Southwest Florida (8.5" X 11")
- 2 Letter from Conservancy of Southwest Florida, dated July 31, 2008, (15 pages) (8.5" X 11")
- 3 Notes from representative Ryan for Conservancy of Southwest Florida, (17 pages) (8.5" X 11")

#### **SCCF / Wessell**

- 1 Two aerials of Bayside Road (color)(8.5" X11")
- 2 Two photographs of Mangroves, dated 2004 (color)(8.5"X11")
- 3 Two photographs of Mangroves, dated 2008 (color)(8.5" X11")
- 4 Six photographs, dated July 2008 (color)(8.5"X11")
- 5 Map of Pine Island Sound Aquatic Preserve, dated July 24, 2006 (color)(8.5"X11")
- 6 Letter from SCCF, dated August 7, 2008, (15 pages) (8.5"X11")

#### **Tritaik**

- 1 Resume for Paul Stephen Tritaik, Refuge Manager for FWS-Pelican Island NWR/Archie Carr NWR

**Urich**

- 1 Responsible Growth Management Coalition, Inc., Brochure (color)(8.5" X 11")

**B. EXHIBITS FROM 2004/2005 HEARINGS:**

Harbour Pointe Paving, Grading and Drainage Plan, prepared by Johnson Engineering, Inc., dated February 2004, Sheet 1, date stamped "Received July 9, 2004 Zoning"

**STAFF'S EXHIBITS**

- 1 2002 Master Development Plan for South Seas Resort, date stamped approved August 9, 2002
- 2 Three (3) photographs
- 3 Zoning Resolution Z-02-049
- 4 Letter from Harry Silverglide to Nettie Richardson, dated August 7, 2005
- 5 Excerpt from the Law of Zoning and Planning manual (three pages)

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein

**APPLICANT'S EXHIBITS**

- 1 1973 GAG Plan
- 2 Administrative Interpretation for South Seas Resort
- 3 Raymond Pavelka Resume
- 4 Preservation Plan (aerial/color)
- 5 Alternative Development Plan
- 5a Harbour Pointe at South Seas Resort Alternate Site Plan I - 1973
- 5b Harbour Pointe at South Seas Resort Alternate Site Plan II - 2003
- 5c Harbour Pointe at South Seas Resort Alternate Site Plan III - 2004
- 6 Letter from John Bates, with Captiva Island Fire Control District, to Nettie Ricahrdson, dated April 7, 2005

- 7 Harbour Pointe Roadway Plan / Captiva Island, Sheet 1 of 1, prepared by Johnson Engineering, Inc., dated October 2004
- 8 Harbour Pointe Paving, Grading & Drainage Plan, Sheet 1, prepared by Johnson Engineering, Inc., dated February 2004, last revised September 7, 2004
- 9 Compatibility Study Elevation (color)
- 10 Channel to Bryant Bayou and re-configured 7<sup>th</sup> hole (aerial/color)
- 11 Bridge Design Elevation (color)
- 12a 2005 Aerial Photograph, Sheet 1 of 2 (color)
- 12b 2005 Aerial Photograph, Sheet 2 of 2 (color)
- 13 Wetland Preservation Bar Graph (color)
- 14 Corbett McP. Torrence Curriculum Vita
- 15 Phase I - Archaeological Assessment of the proposed Harbour Pointe Development at South Seas Plantation, dated January 2004, Revised March 2005
- 16 Joseph W. Ebner, P.E. Resume
- 17 Traffic Impact Statement for Harbour Pointe at South Seas Plantation
- 18 Kevin L. Erwin Resume
- 19 Lee County Environmental Assessment and Mitigation Plan, including listed Species Baseline Report for Harbour Pointe at South Seas Resort, date May 25, 2004
- 20 Habitat Functional Assessments at Harbour Pointe Pre- and Post- Hurricane Charley
- 20a Enlarged photographs of Hurricane Charley Impacts, dated August 19, 2005 [board exhibit]
- 20b Enlarged photographs of Hurricane Charley Impacts, dated October 4, 2005 [board exhibit]
- 21 Harbour Pointe Cross Section, NTS, prepared by Kevin L. Erwin Consulting Ecologist, Inc., last revised December 9, 2004
- 22 Seagrass Map (aerial/color/8½ " x 11")
- 23 Letter to Nettie Richardson, dated January 17, 2005, with Evaluation of the Proposed Harbour Pointe Development Plan, prepared by Ecosystem Specialists in April 2005
- 24 Harbour Pointe Narrative

- 25 Zoning Master Concept Plan, dated February 2002, prepared by Johnson Engineering, date stamped "Received July 9, 2004 Zoning" [two copies]
- 26 Letter to Ray Pavelka from Robert Magee (Lee County Planning), dated July 23, 1985
- 27 Letter to Ray Pavelka from Richard Anderson (Lee County Planning), dated June 24, 1987
- 28 Aerial Photograph, dated April 18, 1972
- 29 Composite consisting of several letters and two aerial photographs
- 30 Letters of Support
- 31 Response to Lee Plan issues cited in letters from Ms. Wessel & Mr. Dickman
- 32 Project Summary, dated May 6, 2005 (four pages with attachments)
- 33 Memorandum to Hearing Examiner's Office from Ray Pavelka, dated June 23, 2005, re: Site Visit Gate Pass Instructions and Map for Hearing Examiner Site Visit [post hearing submittal]

#### **OTHER EXHIBITS**

##### Bixler

- 1 Document labeled Harbour Pointe - Proposed Revisions, dated April 6, 2005, prepared by David W. Ceilley, M.S., PWS, Senior Ecologist, ESA, with Conservancy of SW Florida
- 2 Letter detailing concerns and opposition to the proposed Harbour Pointe project, dated April 8, 2005

##### Bortone

- 1 Bortone Resume
- 2 Written Article

##### Ceilley

- 1 Ceilly Resume

##### Dickman

- 1 Letter detailing concerns and opposition to the proposed Harbour Pointe project, dated April 8, 2005, and Resume for Andrew W. J. Dickman

Garvey

- 1 South Seas Residential Unit Size (Chart/Table)

Newcomb-Jones

- 1 Letter detailing concerns and opposition to the proposed Harbour Pointe project, dated April 8, 2005

Uhle

- 1 1985 Plan for Harbour Pointe
- 2 Wessell Resume
- 3 Series of Aerials dated 1970 through 2002
- 4 Mangrove photograph, taken by Matt Bixler, dated April 2005
- 5 Photograph taken by Rae Ann Wessell, dated October 2004
- 6 Sand Road photograph, taken by Matt Bixler, dated April 2005

**VII. PRESENTATION SUMMARY:**

See Official Court Reporter Transcripts

**VIII. OTHER PARTICIPANTS AND SUBMITTALS:**

**A. PARTICIPANTS FROM 2008 HEARINGS**

**ADDITIONAL APPLICANT'S REPRESENTATIVES:**

1. David Depew, c/o Morris - Depew and Associates, Inc., 2914 Cleveland Avenue, Fort Myers, Florida 33901
2. Kevin L. Erwin, c/o Kevin L. Erwin Consulting, 2077 Bayside Parkway, Fort Myers, Florida 33901
3. Michael Frankenberger, c/o Kevin L. Erwin Consulting, 2077 Bayside Parkway, Fort Myers, Florida 33901
4. Harvey Harper, c/o ERD, 3419 Trentwood Boulevard, Orlando, Florida 32812
5. Steve Hartsell, c/o Pavese Law Firm, 1833 Hendry Street, Fort Myers, Florida 33901
6. W. Michael Maxwell, c/o Maxwell & Hendry Valuation Service, 12600-1 World Plaza Lane, Fort Myers, Florida 33907
7. Vincent Miller, c/o Johnson Engineering, Inc., Post Office Box 1550, Fort Myers, Florida 33902-0398

8. George Patton, c/o EC Driver & Associates, 500 N. Westshore Boulevard, Suite 500, Tampa, Florida 33609
9. Ray Pavelka, c/o Plantation Development, Ltd., 13451 McGregor Boulevard 27, Fort Myers, Florida 33919
10. Robert M. Taylor, c/o Mariner Properties Development Inc., 13451 McGregor Boulevard 27, Fort Myers, Florida 33919
11. Andy Tilton, c/o Johnson Engineering, Inc., Post Office Box 1550, Fort Myers, Florida 33902-0398
12. David Willems, c/o Johnson Engineering, Inc., Post Office Box 1550, Fort Myers, Florida 33902

**ADDITIONAL COUNTY STAFF:**

1. Craig Brown, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902-0398
2. Susie Derheimer, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902-0398
3. John Fredyma, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902

**PUBLIC PARTICIPATION:**

- 1) The following persons testified or submitted evidence for the record at the remand hearing:

**For: NONE**

**Against:**

1. Kristie Anders, Post Office Box 978, Sanibel, Florida 33957
2. Erick Lindblad, 2354 Jasper Avenue, Fort Myers, Florida 33907
3. Nicole Ryan, c/o Conservancy of SWFL, 1450 Merrihue Drive, Naples, Florida 34102
4. David A. Urich, 3919 McKinley Avenue, Fort Myers, Florida 33901

**General:**

1. Steffeny Price, representing the owners of Lands End at South Seas Island Resort, no address provided ([steffenyprice@aol.com](mailto:steffenyprice@aol.com))
2. Paul Tritaik, representing J. N. "Ding" Darling National Wildlife Refuge Complex of the U. S. Fish & Wildlife Service, 950 Tarpon Bay Road, Sanibel, Florida

2) The following persons submitted a letter/comment card, or otherwise requested a copy of the 2008 Hearing Examiner Remand Recommendation:

**For:** NONE

**Against:**

1. Robert Brace, Post Office Box 906, Captiva, Florida 33924-0906
2. Loren D. Coen, 16007 Waterloo Lane, Fort Myers, Florida 33908
3. Matt Uhle, c/o Knott, Consoer, Ebilini & Hart, 1625 Hendry Street, Fort Myers, Florida 33901
4. Rae Ann Wessel, Post Office Box 713, Fort Myers, Florida 33902

**General:**

1. Gary Baugher, 6951 Deep Lagoon Lane, Fort Myers, Florida 33919

**B. PARTICIPANTS FROM 2004/2005 HEARINGS:**

**ADDITIONAL APPLICANT'S REPRESENTATIVES:**

1. Joe Ebner, Johnson Engineering, Inc., 3521 Del Prado Boulevard, Suite 100, Cape Coral, Florida 33904
2. Kevin L. Erwin, Ecologist, 2077 Bayside Parkway, Fort Myers, Florida 33901
3. Bob Taylor, Mariner Properties Development, Inc., 13451 McGregor Boulevard, Suite 31, Fort Myers, Florida 33919
4. Corbett Torrence, 15770 Lake Candlewood, Fort Myers, Florida 33908
5. Matt Uhle, c/o Knott Consoer Law Firm, 1625 Hendry Street, Fort Myers, Florida 33901 (as of November 8, 2007 status hearing)

**ADDITIONAL COUNTY STAFF:**

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902
2. Kim Trebatoski, Principal Planner, Environmental Services, P. O. Box 398, Fort Myers, Florida 33902

**PUBLIC PARTICIPATION:**

**A. The Following Persons Testified or Submitted Evidence for the Record at 2004/2005 Hearings:**

**For:**

1. Dave Jansen, P. O. Box 191, Captiva, Florida 33924
2. Harold D. Miller, Jr., P. O. Box 656, 11400 Old Lodge Lane, Captiva, Florida 33924

**Against:**

1. Paul Andrews, 743 Martha's Lane, Sanibel, Florida 33957
2. Kristie Anders, represented by Paul Andrews, P. O. Box 978, Sanibel, Florida 33957
3. Matt Bixler, P. O. Box 1566, Fort Myers, Florida 33902
4. Stephen A. Bortone, 9248 Dimmick Drive, Sanibel, Florida 33953
5. Robert & Sharon Brace, P. O. Box 906, Captiva, Florida 33924
6. David Ceilly, 1366 Oaklawn Court, Fort Myers, Florida 33919
7. Andrew Dickman, Conservancy of SW Florida, 2123 First Street, Fort Myers, Florida 33901
8. William Fenniman, P. O. Box 682, Captiva, Florida 33924
9. Paul Garvey, P. O. Box 778, Captiva, Florida 33924
10. Rob Jess, 1 Wildlife Drive, Sanibel, Florida 33957
11. Carol Newcomb-Jones, 1736 Maple Avenue, Fort Myers, Florida 33901
12. Constance Langmann, 340 Kingston Drive West, Fort Myers, Florida 33905
13. Erick Lindblad, 2354 Jasper Avenue, Fort Myers, Florida 33907
14. Zeke McDonald, P. O. Box 185, Captiva, Florida 33924
15. Jane K. Morgan, P. O. Box 181, Captiva, Florida 33924
16. Sandy Nelson, 16201 Captiva Drive, Captiva, Florida 33924
17. Laura & William Riley, P. O. Box 760, Captiva, Florida 33924
18. Shirley Stanton, P. O. Box 1221, Captiva, Florida 33924

19. Matt Uhle, Esquire, Knott, Consoer, Ebelini, Hart and Swett, 1625 Hendry Street, Suite 301, Fort Myers, Florida 33901

20. Saerita Van Vleck, P. O. Box 159, Captiva, Florida 33924

21. Rae Ann Wessel, P. O. Box 413, Fort Myers, Florida 33902

**B. The Following Persons Submitted a Letter/comment Card, or Otherwise Requested a Copy of the Hearing Examiner 2004/2005 Recommendation:**

**For:**

1. James C. Boyle & Frances C. Bainor-Boyle, 14790 Captiva Drive, P. O. Box 147, Captiva, Florida 33924

2. Stephen Cutler, no mailing address provided

3. John W. Madden, Jr., P. O. Box 305, Captiva, Florida 33924

4. Rene Miville, no mailing address provided

**Against:**

1. William & Yolanda Downey, P. O. Box 272, Captiva Island, Florida 33924

**General:**

1. James T. Bailey, 7045 Bellevue Farm Road, Warrenton, VA 20186

2. John F. Bates, Captiva Island Fire Control District, P. O. Box 477, Captiva, Florida 33924

3. Gary and Sheila Bello, represented by Chris van der Baars, 727 Mallard Bay, Lexington, Kentucky 40502

4. Amy Fleming, 13051 Cinnabar Lane, Fort Myers, Florida 33908

5. Lee R. Weiner, 4200 Tuckahoe Road, Memphis, Tennessee 38117

**IX. LEGAL DESCRIPTION:**

See Exhibit A (scanned legal description).

**X. UNAUTHORIZED COMMUNICATIONS:**

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other

matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the Hearing Examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the Hearing Examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

**XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:**

A. This recommendation is made this 8<sup>th</sup> day of October 2008. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

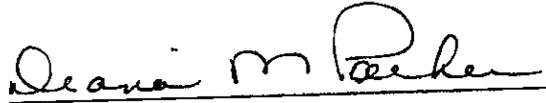
B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date of this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

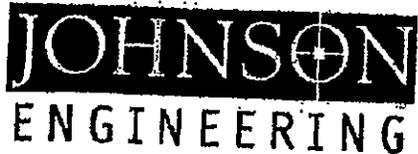
D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

**XII. COPIES OF TESTIMONY AND TRANSCRIPTS:**

A verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.



DIANA M. PARKER  
LEE COUNTY HEARING EXAMINER  
1500 Monroe Street, Suite 218  
Post Office Box 398  
Fort Myers, Florida 33902-0398  
Telephone: 239/533-8100  
Facsimile: 239/485-8406



November 9, 2005

DESCRIPTION

**HARBOUR POINTE AT SOUTH SEAS RESORT  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA**

A parcel or tract of land lying in Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

Beginning the northerly most terminus point of a bulkhead line and submerged lands as described in deed from the Trustees of Internal Improvement Trust Fund as recorded in Official Record Book 572 at Page 14, Public Records of Lee County, Florida, run southeasterly along the arc of a curve to the right of radius 25.00 feet (chord bearing S 89°56'05" E)(chord 38.97 feet)(delta 102°24'41") for 44.69 feet to a point of tangency; thence run S 38° 44' 10" E for 497.24 feet to a point of curvature; thence run southeasterly along the arc of said curve to the right of radius 1400.00 feet (chord bearing S 35° 16' 00" E) (chord 169.44 feet) (delta 06° 56' 19") for 169.55 feet to a point of tangency; thence run S 31° 47' 50" E for 59.15 feet; thence run S 57°32'38" W departing said bulkhead line for 145.25 feet; thence run N 88°39'17" W for 76.32 feet; thence run S 68°06'38" W for 383.97 feet; thence run N 21°30'40" W for 38.00 feet; thence run N 68°06'37" E for 104 feet, more or less, to an intersection with the Mean High Water Line of the east shore of Bryant Bayou; thence run northerly meandering said Mean High Water Line for 729 feet, more or less to an intersection with a line that bears S 09°40'20" W and passes through the Point of Beginning; thence run N 09°40'20" E for 45.76 feet to the Point of Beginning.

Parcel contains 5.2 acres, more or less.

**SUBJECT TO** easements, restrictions and reservations of record.

Bearings shown hereon are based on the Bulkhead line as described in official record book 572, page 14, public records of Lee County, Florida, wherein the northerly most line bears S 38°44'10" E.

*Michael W. Norman*  
Michael W. Norman (for The Firm LB-642)

Applicant's Legal Checked  
by BSJ 7-14-08

Professional Land Surveyor  
Florida Certificate No. 4500

20033899 11-09-05 -- Description Harbour Pointe

EXHIBIT 3.5M Application #050408-15

2158 Johnson Street ■ Post Office Box 1550 ■ Fort Myers, Florida 33902-1550  
(239) 334-0046 ■ Fax (239) 334-3661

DOI 2004-00036

EXHIBIT A

DCI 2004-00036

Applicant's Legal Checked  
by *BAJ* 7/14/08

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE BULLHEAD LINE AS DESCRIBED IN OFFICIAL RECORD BOOK 572, PAGE 14, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHEREIN THE NORTHERLY MOST LINE BEARS S 38°44'10" E.
2. THIS SKETCH DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
3. POC = POINT OF COMMENCEMENT.
4. POB = POINT OF BEGINNING.
5. DESC. = DESCRIPTION
6. PARCEL CONTAINS 228,363 SQUARE FEET (5.2 ACRES) MORE OR LESS.
7. G.L. = GOVERNMENT LOT
8. OR = OFFICIAL RECORDS BOOK
9. PG. = PAGE
10. TRIF = TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
11. DESCRIPTION ATTACHED.

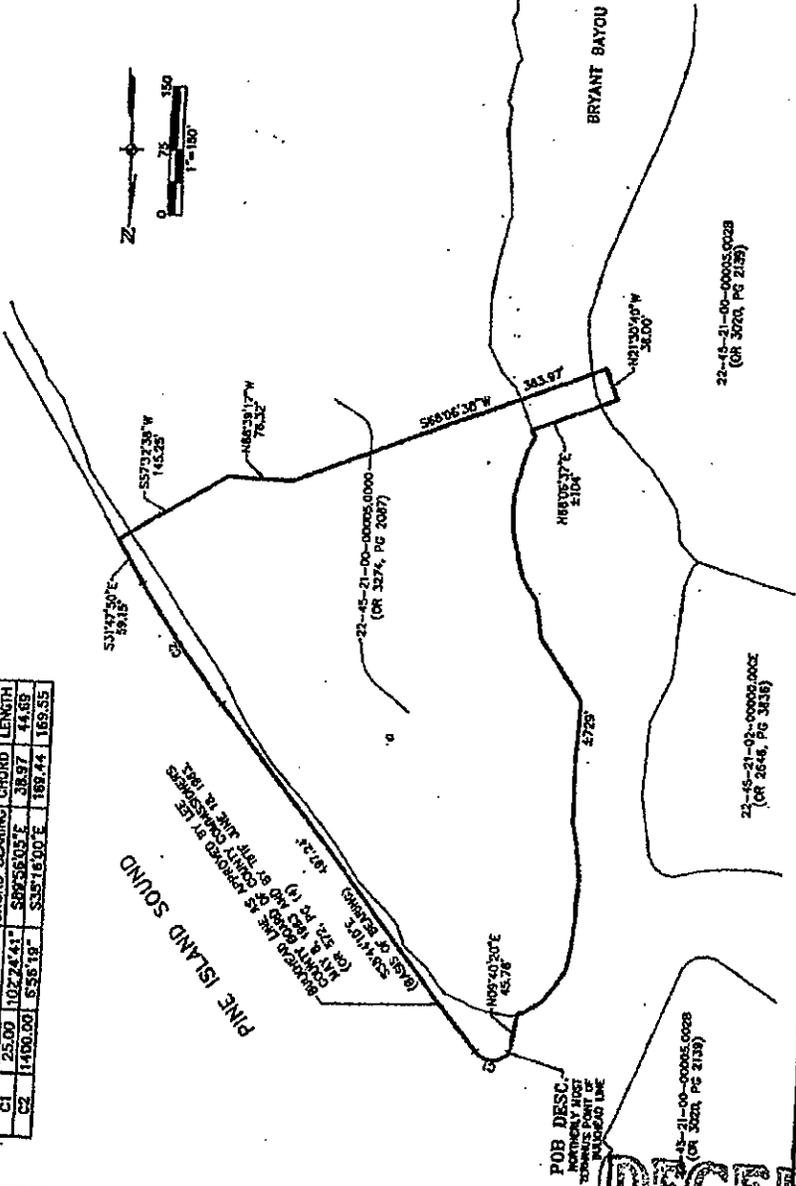
THIS IS NOT A SURVEY

*Michael W. Morgan*  
MICHAEL W. MORGAN (FOR THE FIRM LB-842)  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 4500

DATE SIGNED: NOV 07 2005  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



CURVE	RADIUS	DELTA	CHORD BEARINGS	CHORD LENGTH
C1	25.00	102°24'41"	S82°35'03"E	38.97
C2	14100.00	5°55'18"	S85°16'00"E	162.44



**JOHNSON ENGINEERING**

HARBOUR POINTE  
LYING IN  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

SKETCH TO ACCOMPANY DESCRIPTION

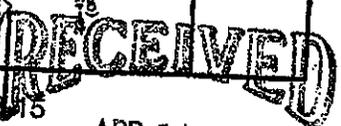
2158 JOHNSON STREET  
FORT MYERS, FLORIDA 33902-1550  
PHONE (239) 334-0058  
FAX (239) 334-3861  
E.B. #842 & L.B. #842

DATE	11/08/05	PROJECT NO.	20033899	FILE NO.	22-45-21	SCALE	1"=150'	SHEET	1 OF 1
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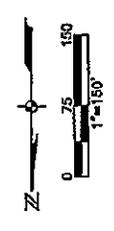
DCI 2004-00036

EXHIBIT 3.5L Application #05040815

APR 24 2008



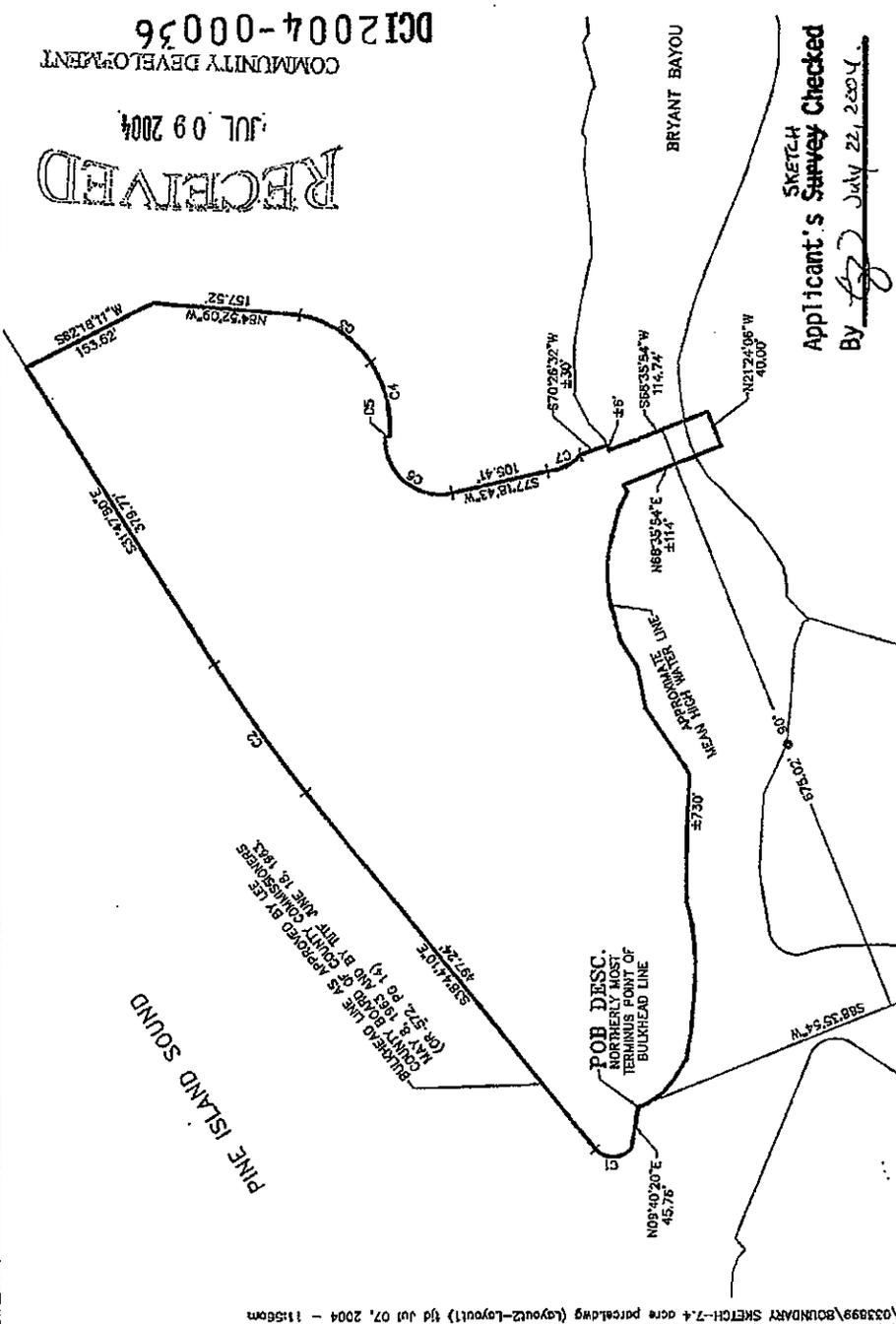
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 DCI2004-00036  
 COMMUNITY DEVELOPMENT



- NOTES:
1. BEARINGS SHOWN HEREON ARE BASED ON THE BULKHEAD LINE AND SUBMERGED LANDS DESCRIBED IN OFFICIAL RECORD BOOK 972, PAGE 14, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHEREIN THE NORTH LINE OF SECTION 27, TOWNSHIP 45 SOUTH, RANGE 21 EAST BEARS N 81°30'10" W.
  2. THIS SKETCH DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON SUBJECT PARCEL.
  3. P.O.B. = POINT OF BEGINNING
  4. P.O.B. = POINT OF COMMENCEMENT
  5. DESCRIBED PARCEL IS UNPLATTED
  6. DESCRIBED PARCEL IS UNRECORDED
  7. C1 = GOVERNMENT LOT
  8. C2 = OFFICIAL RECORDS BOOK
  9. P.C. = PAGE
  10. T.I.F.F. = TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

CURVE	RADIUS	DELTA	CHORD BEARINGS	CHORD LENGTH
C1	25.00	102°24'41"	S89°36'05"E	38.97
C2	1400.00	6°55'19"	S35°16'00"E	189.44
C3	175.02	4°09'27"	N56°14'15"W	91.39
C4	128.88	3°37'17"	N13°51'23"W	85.63
C5	27.23	10°18'04"	N89°14'45"E	4.89
C6	59.78	105°06'28"	N49°42'16"W	53.96
C7	51.84	45°31'28"	S64°00'37"W	40.11

THIS IS NOT A SURVEY  
*Michael A. Johnson*  
 MICHAEL A. JOHNSON  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA CERTIFICATE NO. 4500  
 DATE SIGNED: 7/7/04



SKETCH  
 Applicant's Survey Checked  
 By *[Signature]* July 22, 2004

2155 JOHNSON STREET  
 P.O. BOX 1550  
 FORT MYERS, FLORIDA 33902-1550  
 PHONE (888) 334-3886  
 FAX (888) 334-3886  
 E.B. #642 & L.B. #642

**JOHNSON**  
 ENGINEERING

HARBOUR POINTE  
 LYING IN  
 SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
 CAPTIVA ISLAND, LEE COUNTY, FLORIDA

SKETCH TO ACCOMPANY  
 DESCRIPTION

DATE: 7/01/04  
 PROJECT NO.: 20033889  
 FILE NO.: 22-45-21  
 SCALE: 1"=150'  
 SHEET: 1 OF 1

February 26, 2004

**DESCRIPTION****PARCEL "A"****PLANTATION DEVELOPMENT LIMITED AT SOUTH SEAS PLANTATION  
SECTIONS 22 AND 23, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA**

A parcel or tract of land lying in Sections 22 and 23, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

From the northerly most terminus point of a bulkhead line and submerged lands from a Trustees of Internal Improvement Trust Fund as recorded in Official Record Book 572 at Page 14, Public Records of Lee County, Florida; thence run the following courses and distances along said bulkhead line and submerged lands: run southeasterly along arc of a curve to the right of radius 25.00 feet (chord bearing S 89° 56' 05" E) (chord 38.97 feet) (delta 102° 24' 41") for 44.69 feet to a point of tangency; thence run S 38° 44' 10" E for 497.24 feet to a point of curvature; thence run southeasterly along the arc of said curve to the right of radius 1400.00 feet (chord bearing S 35° 16' 00" E) (chord 169.44 feet) (delta 06° 56' 19") for 169.54 feet to a point of tangency; thence run S 31° 47' 50" E for 591.34 feet to a point of curvature; thence run southeasterly along the arc of said curve to the right of radius 500.00 feet (chord bearing S 32° 53' 55" E) (chord 19.22 feet) (delta 02° 12' 09") for 19.22 feet to a point of tangency; thence run S 34° 00' 00" E for 981.23 feet to a point of curvature; thence run southeasterly along the arc said curve to the right of radius 150.00 feet (chord bearing S 23° 00' 00" E) (chord 57.24 feet) (delta 21° 59' 56") for 57.59 feet to a point of tangency; thence run S 12° 00' 00" E for 638.00 feet to a point of curvature; thence run southeasterly along the arc of said curve to the right of radius 220.00 feet (chord bearing S 04° 22' 30" E) (chord 58.38 feet) (delta 15° 14' 57") for 58.55 feet to a point of reverse curvature; thence run southeasterly along the arc of said curve to the left of radius for 540.00 feet (chord bearing S 01° 30' 26" W) (chord 32.85 feet) (delta 03° 29' 09") for 32.85 feet to an intersection with the north line of the lands as described in deed recorded in Official Record Book 3170 at page 177, Public Records of Lee County, Florida; thence run N 89° 30' 10" W departing said bulkhead line along the north line of lands described in said deed for 86.57 feet; thence run N 00° 00' 00" E departing said line for 63.76 feet; thence run S 90° 00' 00" W for 21.74 feet; thence run S 08° 55' 34" W for 14.68 feet; thence run S 25° 31' 51" W for 16.30 feet; thence run S 40° 27' 56" W for 7.86 feet; thence run S 65° 11' 47" W for 7.61 feet; thence run N 89° 30' 10" W for 224.64 feet; thence run N 51° 45' 49" W for 8.27 feet; thence run N 89° 05' 39" W for 73.34 feet; thence run S 36° 16' 35" W for 6.88 feet; thence run N 89° 30' 10" W for 478.99 feet; thence run

DCI2004-00036

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JUN 01 2004

N 36° 37' 50" W for 53.74 feet; thence run N 87° 52' 55" W for 89.73 feet; thence run S 12° 54' 50" W for 46.47 feet; thence run S 89° 30' 10" W for 20.96 feet to a point of curvature; thence run southwesterly along the arc of said curve to the left of radius 69.70 feet (delta 24° 44' 46") (chord bearing S 78° 07' 27" W) (chord 29.87 feet) for 30.10 feet to a point of tangency; thence run S 69° 49' 43" W for 42.82 feet; thence run N 19° 52' 39" W for 131.98 feet; thence run S 69° 59' 53" W for 137.59 feet; thence run N 48° 39' 34" W for 174 feet, more or less, to an intersection with the Mean High Water Line of Bryant Bayou; thence run northerly, northeasterly, northerly meandering said Mean High Water Line for 2,740 feet, more or less, to an intersection with the line that is 675.02 feet south of (as measured on a perpendicular) and parallel with the line bearing S 68° 35' 54" W and passing through the Point of Beginning; thence run S 68° 35' 54" W along said parallel line for 114.74 feet; thence run N 21° 24' 06" W for 40.00 feet; thence run N 68° 35' 54" E and parallel with said parallel line for 114 feet, more or less, to an intersection with the Mean High Water Line along the easterly shore of said Bryant Bayou; thence run northerly meandering said Mean High Water Line for 730 feet, more or less, to the Point of Beginning.

Parcel contains 42.6 acres, more or less.

SUBJECT TO easements, restrictions and reservations of record.

Bearings hereinabove mentioned are based on the bulkhead line and submerged lands described in Official Record Book 572 at page 14, Public Records of Lee County, Florida, wherein the north line of Section 27, Township 45 South, Range 21 East bears N 81° 30' 10" W.

**Applicant's Legal Checked**

by MS July 22, 2004.

Michael W. Norman  
Michael W. Norman (for The Firm L.B. 642)  
Professional Land Surveyor  
Florida Certificate No. 4500



RECEIVED

JUN 01 2004

COMMUNITY DEVELOPMENT

20033899 Description Parcel A 022604

DCI2004-00036

February 26, 2004

DESCRIPTION

PARCEL "B"

PLANTATION DEVELOPMENT LIMITED AT SOUTH SEAS RESORT  
SECTIONS 22 AND 23, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

A tract or parcel of land lying in Sections 22 and 23, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

From the corner common to Sections 22, 23, 26 and 27 run N 24° 37' 26" E for 369.60 feet to an intersection with the Bulkhead line as approved by the Lee County Board of County Commissioners, May 8, 1963 and approved by the Trustee's of the Internal Improvement Fund on June 8, 1963 and as described in submerged land deed as recorded in Official Record Book 572 at page 14, Public Records of Lee County, Florida, said point of intersection being a non-tangent beginning of a curve and the Point of Beginning.

From said Point of Beginning run the following courses and distances along said Bulkhead line: northwesterly along the arc of a curve to the right of radius 241.48 feet (delta 76° 13' 23") (chord bearing N 39° 41' 20" W) (chord 298.08 feet) for 321.25 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the left of radius 680.00 feet (delta 37° 10' 00") (chord bearing N 20° 09' 40" W) (chord 433.41 feet) for 441.10 feet to a point of tangency; thence run N 38° 44' 40" W for 145.60 feet to a point of curvature; thence run northwesterly along the arc of said curve to the right of radius 150.00 feet (delta 76° 26' 33") (chord bearing N 00° 31' 20" W) (chord 185.61 feet) for 200.13 feet to a point of reverse curvature; thence run northeasterly along the arc of said curve to the left of radius 150.00 feet (delta 31° 08' 47") (chord bearing N 22° 07' 33" E) (chord 80.54 feet) for 81.54 feet to an intersection with the south line of the lands as described in deed recorded in Official Record Book 3170 at page 177, Public Records of Lee County, Florida; thence run S 89° 30' 10" E along the south line of said lands for 1,122.66 feet to an intersection with the curved easterly line of the hereinabove described Bulkhead line; thence run southeasterly along the arc of said curve to the left of radius 397.28 feet (delta 37° 56' 55") (chord bearing S 04° 30' 33" E) (chord 258.35 feet) for 263.13 feet to a point of reverse curvature; thence run southeasterly along the arc of said curve to the right of radius 200.00 feet (delta 19° 11' 00") (chord bearing S 13° 53' 30" E) (chord 66.65 feet) for 66.96 feet to a point of tangency; thence run S 04° 18' 00" E for 286.00 feet to a point of curvature; thence run southwesterly along the arc of said curve to the right of radius 200.00 feet (delta 19° 00' 01") (chord bearing S 05° 12' 00" W) (chord 66.02 feet) for 66.32 feet to a point of tangency; thence run S 14° 42' 00" W for 244.00 feet to a point of curvature; thence run southwesterly along the arc of said curve to the right of radius 250.00 feet (delta 87° 30' 04") (chord bearing S 58° 27' 00" W) (chord

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345.76 feet) for 381.80 feet to a point of tangency; thence run N 77° 48' 00" W  
for 425.21 feet to the Point of Beginning.

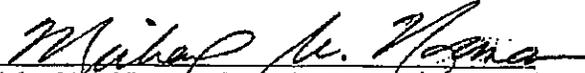
Parcel contains 24.5 acres, more or less.

SUBJECT TO easements, restrictions and reservations of record.

Bearings hereinabove mentioned are based on south line of Section 22, Township 45 South,  
Range 21 East to bear N 81° 30' 10" W.

**Applicant's Legal Checked**

by MS July 22, 2004

  
Michael W. Norman (For The Firm EB-642)  
Professional Surveyor and Mapper  
Florida Certificate No. 4500



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COMMUNITY DEVELOPMENT

20033899 Description Parcel B 022604

DCI2004-00036

February 26, 2004

DESCRIPTION

## PARCEL "C"

PLANTATION DEVELOPMENT LIMITED AT SOUTH SEAS RESORT  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

A tract or parcel of land lying in Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

From the intersection of the south line of the lands as described in deed recorded in Deed Book 209 at Page 71, Lee County Records with the curved easterly line of a Roadway Easement (50 feet wide) as described in Amended Grant of Easement recorded in Official Record Book 1806 at Page 3868, Lee County Records; thence run the following four (4) courses and distances along the east line of said 50 foot Roadway Easement: run northwesterly along said curved easement line to the right of radius 360.00 feet (chord bearing N 26° 02' 25" W) (chord 22.27 feet) (delta 03° 32' 39") for 22.27 feet to a point of compound curvature; thence run northwesterly along the arc of said curve to the right of radius 215.00 feet (chord bearing N 11° 38' 02" W) (chord 94.05 feet) (delta 25° 16' 05") for 94.82 feet to a point of tangency; thence run N 01° 00' 00" E for 122.00 feet to a point of curvature; thence run northwesterly along the arc of said curve to the left of radius 163.00 feet (chord bearing N 15° 48' 55" W) (chord 94.31 feet) (delta 33° 37' 50") for 95.68 feet to an intersection with a point on the north line of a Conservation Easement described in deed recorded in Official Record Book 1983 at Page 4023 said public records; thence departing said Roadway Easement run the following seven (7) courses and distances along said conservation easement line: N 77° 58' 54" E for 60.69 feet; N 74° 06' 57" E for 128.31 feet; S 63° 06' 40" E for 11.81 feet to a point of curvature; thence run southeasterly along the arc of said curve to the left of radius 170.00 feet (chord bearing S 79° 27' 32" E) (chord 95.70 feet) (delta 32° 41' 45") for 97.01 feet to a point of tangency; thence run N 84° 11' 36" E for 86.22 feet to a point of curvature; thence run northeasterly along the arc of said curve to the left of radius 331.10 feet (chord bearing N 74° 58' 20" E) (chord 106.11 feet) (delta 18° 26' 31") for 106.57 feet to a point of reverse curvature; thence run northeasterly along the arc of said curve to the right of radius 39.70 feet (chord bearing N 77° 36' 59" E) (chord 16.33 feet) (delta 23° 43' 50") for 16.44 feet to the northwest corner of the lands as described in deed recorded in Official Record Book 3170 at page 177, Lee County Public Records; thence run S 08° 29' 50" W departing said conservation easement and along the west line of the lands described in said deed for 203.67 feet to an intersection with the northerly line of a submerged land lease as described in Official Record Book 572 at page 14, Lee County Public Records; thence run the following courses and distances along the Bulkhead line as approved by Lee County Board of County Commissioners, May 8, 1963 and approved by the Trustee's of the Internal Improvement Fund on June 8, 1963 and as described in submerged land deed as recorded in Official Record Book 572 at page 14, Public Records of Lee County, Florida: run northwesterly along the arc of said curve to the left of radius 150.00 feet (chord bearing N 65° 57' 32" W) (chord 37.03 feet) (delta 14° 10' 48") for 37.12 feet to a point of tangency; thence run N 73° 03' 00" W for 163.07 feet to a point of

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curvature; thence run northwesterly along the arc of said curve to the right of radius 191.45 feet (chord bearing N 54° 18' 00" W) (chord 123.08 feet) (delta 37° 30' 01") for 125.30 feet to a point of reverse curvature; thence run southwesterly along the arc of said curve to the left of radius 35.00 feet (chord bearing S 66° 57' 00" W) (chord 68.34 feet) (delta 154° 59' 40") for 94.68 feet to a point of tangency; thence run S 10° 33' 00" E for 126.80 feet to a point of curvature; thence run southeasterly along the arc of said curve to the left of radius 73.00 feet (chord bearing S 53° 28' 50" E) (chord 99.44 feet) (delta 85° 51' 31") for 109.39 feet to a point of reverse curvature; thence run southeasterly along the arc of said curve to the right of radius 100.94 feet (chord bearing S 45° 34' 40" E) (chord 156.52 feet) (delta 101° 40' 00") for 179.11 feet to a point of tangency; thence run S 05° 15' 20" W for 110.81 feet to a point of curvature; thence run southeasterly along the arc of said curve to the left of radius 135.00 feet (chord bearing S 16° 44' 40" E) (chord 101.14 feet) (delta 44° 00' 00") for 103.67 feet to a point of tangency; thence run S 38° 44' 40" E for 390.00 feet to a point of curvature; thence run southeasterly along the arc of said curve to the right of radius 620.00 feet (chord bearing S 10° 14' 40" E) (chord 591.68 feet) (delta 57° 00' 00") for 616.80 feet; thence run S 18° 15' 20" W for 317.84 feet; thence run N 81° 30' 10" W departing said bulkhead line for 83.31 feet to an intersection with the easterly curved ling of a roadway and utility easement (75 feet wide) as described in deed recorded in Official Records Book 1846 at Page 807, Lee County Public Records; thence run the following courses and distances along said easterly road easement: northwesterly along said curve to the left of radius 575.00 feet (chord bearing N 14° 12' 51" W) (chord 156.62 feet) (delta 15° 39' 18") for 157.11 feet to a point of tangency; thence run N 22° 02' 30" W for 202.98 feet to a point of curvature; thence run northwesterly along the arc of said curve to the right of radius 215.00 feet (chord bearing N 04° 02' 30" W) (chord 132.88 feet) (delta 36° 00' 00") for 135.09 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the left of radius 685.00 feet (chord bearing N 09° 45' 00" W) (chord 550.85 feet) (delta 47° 25' 00") for 566.89 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the right of radius 790.00 feet (chord bearing N 26° 31' 45" W) (chord 190.61 feet) (delta 13° 51' 30") for 191.08 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the left of radius 385.00 feet (chord bearing N 31° 21' 00" W) (chord 156.80 feet) (delta 23° 30' 00") for 157.91 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the right of radius 335.00 feet (chord bearing N 36° 34' 02" W) (chord 76.23 feet) (delta 13° 03' 56") for 76.39 feet to the end of said curve and an intersection with the south line of the lands as recorded in Deed Book 209 at Page 71, Public Records of Lee County, Florida; thence run S 89° 24' 29" W along said line for 28.40 feet to the Point of Beginning.

Parcel contains 9.3 acres, more or less.

SUBJECT TO easements, restrictions and reservations of record.

Bearings hereinabove mentioned are based on south line of lands described in deed recorded in Deed Book 209 at Page 71, Lee County Public Records to bear N 89° 27' 00" E.

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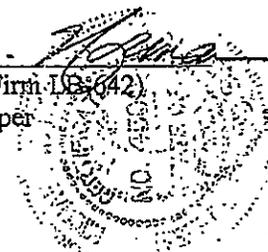
20033899 JUN 01 2004

COMMUNITY DEVELOPMENT

*Michael W. Norman*  
 Michael W. Norman (For The Firm) 183642  
 Professional Surveyor and Mapper  
 Florida Certificate No. 4500

**Applicant's Legal Checked**

by *AS* July 22, 2004



DCI 2004-00036

February 26, 2004

**DESCRIPTION****PARCEL "D"  
PLANTATION DEVELOPMENT LIMITED AT SOUTH SEAS PLANTATION  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA**

A tract or parcel of land lying in Government Lot 3 and Government Lot 5, Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida which tract or parcel is described as follows:

From an intersection of the south line of the lands described in deed recorded Official Record Book 209 at Page 71, Lee County Records with the curved westerly line of a Roadway Easement (South Seas Plantation) (50 Feet Wide) as described in Amended Grant of Easement recorded in Official Record Book 1806 at Page 3868, Lee County Records also being the northeasterly corner of South Seas Plantation Beach homesites as recorded in Plat Book 29 at Page 105, Public Records of Lee County, Florida run S 89° 27' 00" W along said south line and north line of said beach homesites for 138.71 feet; thence run N 07° 02' 29" E departing said line for 141.89 feet; thence run N 08° 52' 16" W for 218.60 feet to an intersection with the southerly curved line of said Roadway Easement; thence run the following courses and distances along said Roadway Easement southeasterly along the arc of said curve to the left of radius 131.00 feet (chord bearing S 79° 36' 43" E) (chord 29.15 feet) (delta 12° 46' 34") for 29.21 feet to a point of reverse curvature; thence run southeasterly along arc of said curve to the right of radius 113.00 feet (chord bearing S 42° 30' 00" E) (chord 155.57 feet) (delta 87° 00' 00") for 171.58 feet to a point of tangency; thence run S 01° 00' 00" W for 122.00 feet to a point of curvature; thence run southeasterly along arc of said curve to the left of radius 265.00 feet (chord bearing S 11° 38' 02" E) (chord 115.92 feet) (delta 25° 16' 05") for 116.86 feet to the Point of Beginning.

Parcel contains 0.9 acres, more or less.

SUBJECT TO easements, restriction and reservations of record.

Bearings hereinabove mentioned are based on the north line of South Seas Plantation Beach Homesites as recorded in Plat Book 29 at Page 109, Public Records of Lee County, Florida also being the south line of the lands described in deed recorded in Deed Book 209 at Page 71, Public Records of Lee County, Florida wherein said line bears S 89° 27' 00" W.

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JUN 01 2004

COMMUNITY DEVELOPMENT

20033899 Description Parcel D 042604

Applicant's Legal Checked

by *[Signature]* July 22, 2004*[Signature]*  
Michael W. Norman (for The Firm L.B-642)Professional Land Surveyor  
Florida Certificate No. 4500

DCI 2004-00036

February 26, 2004

**DESCRIPTION****PARCEL "E"  
PLANTATION DEVELOPMENT LIMITED AT SOUTH SEAS RESORT  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA**

A tract or parcel of land lying in Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

From the easterlymost corner of Plantation Beach Club I, a condominium as shown on Surveyor's Plat, Exhibit "B" to Condominium Declaration recorded in Official Record Book 1188 at page 480, Public Records of Lee County, Florida, run northwesterly and northerly along the easterly line of said condominium and west line of a roadway easement (50 foot wide) as described in amended grant of the easement recorded in Official Record Book 1806 at page 3868, Lee County, Florida, Public Records along the arc of a curve to the right of radius 131.00 feet (delta 28° 36' 51") (chord bearing N 24° 54' 11" W) (chord 64.75 feet) for 65.42 feet to a point of tangency; thence run N 10° 35' 45" W for 40.24 feet; thence run N 59° 49' 11" E 53.07 feet to the easterly side of said roadway easement and the Point of Beginning.

From said Point of Beginning run N 10° 35' 45" W along the easterly line of said roadway easement for 177.02 feet to an intersection with the easterly prolongation of the north line of said Plantation Beach Club One; thence run S 89° 26' 57" W along said prolongation and along the north line of a roadway and utility easement (50 foot wide) for 10.22 feet to an intersection with the westerly line of a roadway and utility easement (30 feet wide); thence run N 09° 02' 37" W along said easterly line for 14.89 feet to the southwesterly corner of the southwesterly tennis court site as described in deed recorded in Official Record Book 1531 at page 1424, Public Records of Lee County, Florida; thence run along the southerly and easterly lines of said site as described in said deed N 81° 35' 41" E for 56.30 feet; N 08° 24' 19" W for 74.80 feet; thence run along the southerly and easterly lines of a tennis court site as described deed recorded in Official Record Book 1531 at page 1421 of said public records; N 81° 35' 41" E for 57.76 feet; N 08° 24' 19" W for 120.14 feet; thence run N 81° 35' 41" E for 10.24 feet; thence run S 02° 54' 19" E for 16.00 feet; thence run N 87° 05' 41" E for 61 feet, more or less, to an intersection with the Mean High Water Line of Bryant Bayou; thence run southerly and southwesterly meandering said Mean High Water Line for 427 feet, more or less, to an intersection with a line bearing N 59° 49' 11" E and passing through the Point of Beginning; thence run S 59° 49' 11" W along said line for 16 feet, more or less, to the Point of Beginning.

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Parcel contains 0.8 acres, more or less.

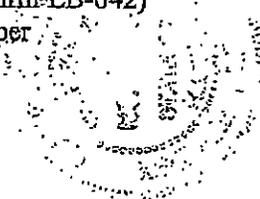
SUBJECT TO easements, restrictions and reservations of record.

Bearings hereinabove mentioned are based on west line of a 50 foot roadway easement as described in deed recorded in Official Record Book 1806 at page 3868, Public Records of Lee County, Florida, wherein the said west roadway easement line bears N 10° 35' 45" W.

**Applicant's Legal Checked**

by *[Signature]* July 22, 2004

*Michael W. Norman*  
Michael W. Norman (For The Firm LB-642)  
Professional Surveyor and Mapper  
Florida Certificate No. 4500



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20033899 Parcel E 022604

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COMMUNITY DEVELOPMENT

PARCEL	AREA (IN ACRES)	AREA OF SUBMERGED LANDS (IN ACRES)
A	±42.6	±0.7
B	±24.5	±1.6
C	±9.3	±1.6
D	±0.9	
E	±0.8	

NOTES:

- THIS SKETCH DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON SUBJECT PARCEL.
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- DESC. = DESCRIPTION
- ATT. = DESCRIPTION ATTACHED
- OL. = OFFICIAL RECORDS BOOK
- OR. = OFFICIAL RECORDS BOOK
- TRIF. = TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
- THE FEMA FLOOD ZONE AS SHOWN WERE TRANSFERRED BY SCALE
- FROM FIRM COMMUNITY PANEL 125124 0262 D, EFFECTIVE DATE 5/5/2003.
- ELEVATIONS SHOWN HEREON ARE IN FEET ABOVE NATIONAL GEODETIC VERTICAL DATUM, 1929, BASED ON A LEVEL LOOP FROM USC & GS BENCH MARK NO. E-260. PUBLISHED ELEVATION = 4.964'.
- THE MEAN HIGH WATER ELEVATION LOCATED HEREON (EL. 1.25') (NGVD 1929) IS BASED ON APPROVAL BY FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) BUREAU OF SURVEY AND MAPPING TO EXTEND ESTABLISHED TIDAL DATUM OF REDFISH PASS, CAPTIVA ISLAND 872 5441, IN ACCORDANCE WITH CHAPTER 177, PART II, FLORIDA STATUTES.

[Symbol] = SUBMERGED LANDS

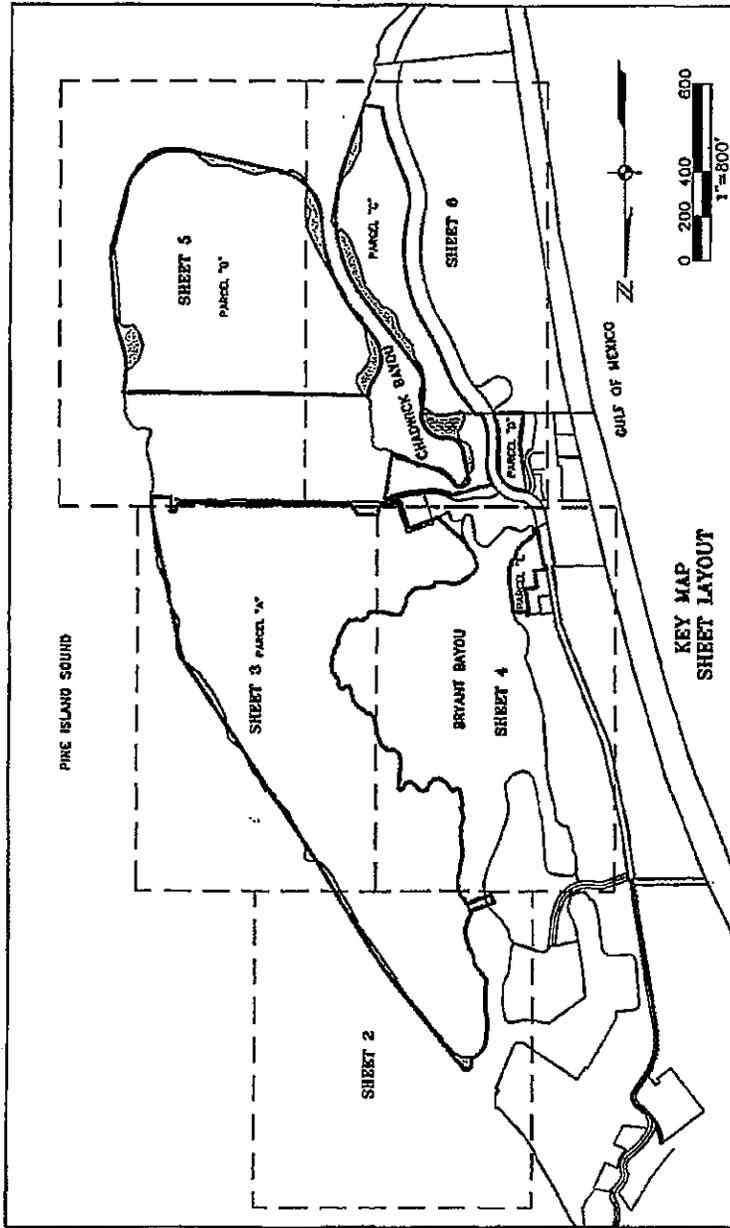


Exhibit PH-3.D.2

Applicant's Legal Checked

by [Signature] July 22, 2004

THIS IS NOT A SURVEY

[Signature]  
 MICHAEL W. NORMAN (FOR THE FIRM) (E.B. #642)  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA CERTIFICATE NO. 4500

DATE SIGNED: FEB 27 2004  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

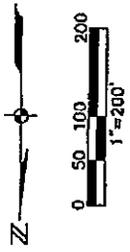
**JOHNSON**  
**ENGINEERING**

2158 JOHNSON STREET  
 P.O. BOX 1550  
 FORT MYERS, FLORIDA 33902-1550  
 PHONE (239) 334-0046  
 FAX (239) 334-3661  
 E.B. #642 & L.B. #642

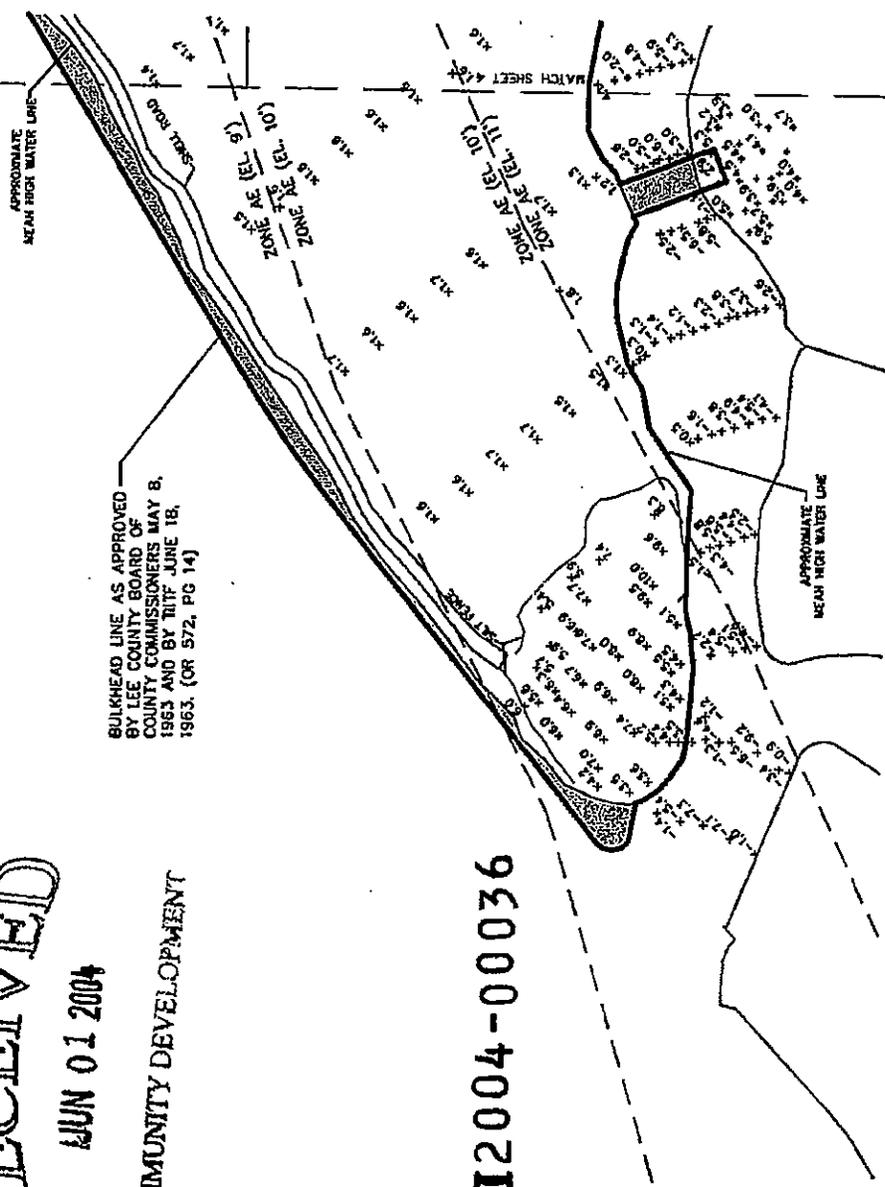
PLANTATION DEVELOPMENT LTD.  
 SECTION 22, 26, & 27, TOWNSHIP 45 S, RANGE 21 E  
 CAPTIVA ISLAND, LEE COUNTY, FLORIDA

SKETCH TO ACCOMPANY DESCRIPTION AND SITE INFORMATION MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
02/26/04	20033699	22-45-21	1"=800'	1 OF 6



PINE ISLAND SOUND



BULKHEAD LINE AS APPROVED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS MAY B. 1963 AND BY TITF JUNE 18, 1963. (OR 572, PG 14)

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COMMUNITY DEVELOPMENT

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SKETCH TO ACCOMPANY DESCRIPTION AND SITE INFORMATION MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
02/26/04	20033695	22-45-21	1"=200'	2 OF 6

2158 JOHNSON STREET  
P.O. BOX 1550  
FORT MYERS, FLORIDA 33902-1550  
PHONE (239) 334-0046  
FAX (239) 334-3651  
E.B. #642 & L.B. #642

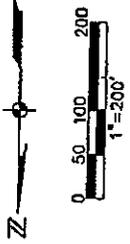
**JOHNSON**  
**ENGINEERING**

PLANTATION DEVELOPMENT LTD,  
SECTION 22, 26, & 27, TOWNSHIP 45 S, RANGE 21 E  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

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ZONE AE (EL. 8')  
ZONE AE (EL. 9')

APPROXIMATE FLOOD ZONE LINE (SEE NOTE 11)

BULKHEAD LINE AS APPROVED  
BY LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS MAY 8,  
1963 AND BY TITF JUNE 18,  
1963. (OR 572, PG 14)

MATCH SHEET 2

CONSERVATION EASEMENT  
(OR 1983, PG 4023)

ZONE AE (EL. 10')  
ZONE AE (EL. 11')

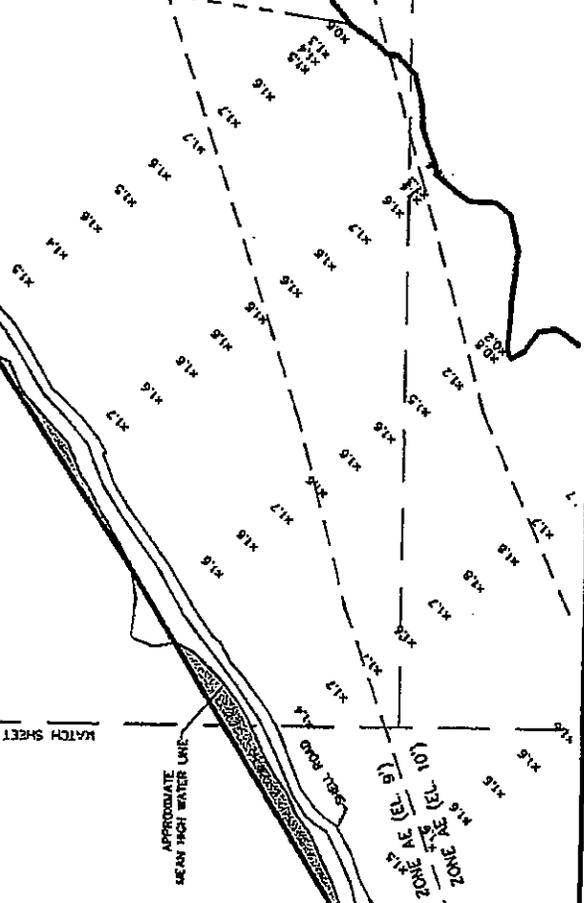
PARCEL "A"

SECTION 23  
SECTION 22

APPROXIMATE  
MEAN HIGH WATER LINE

MATCH SHEET 4

GL 4  
GL 1



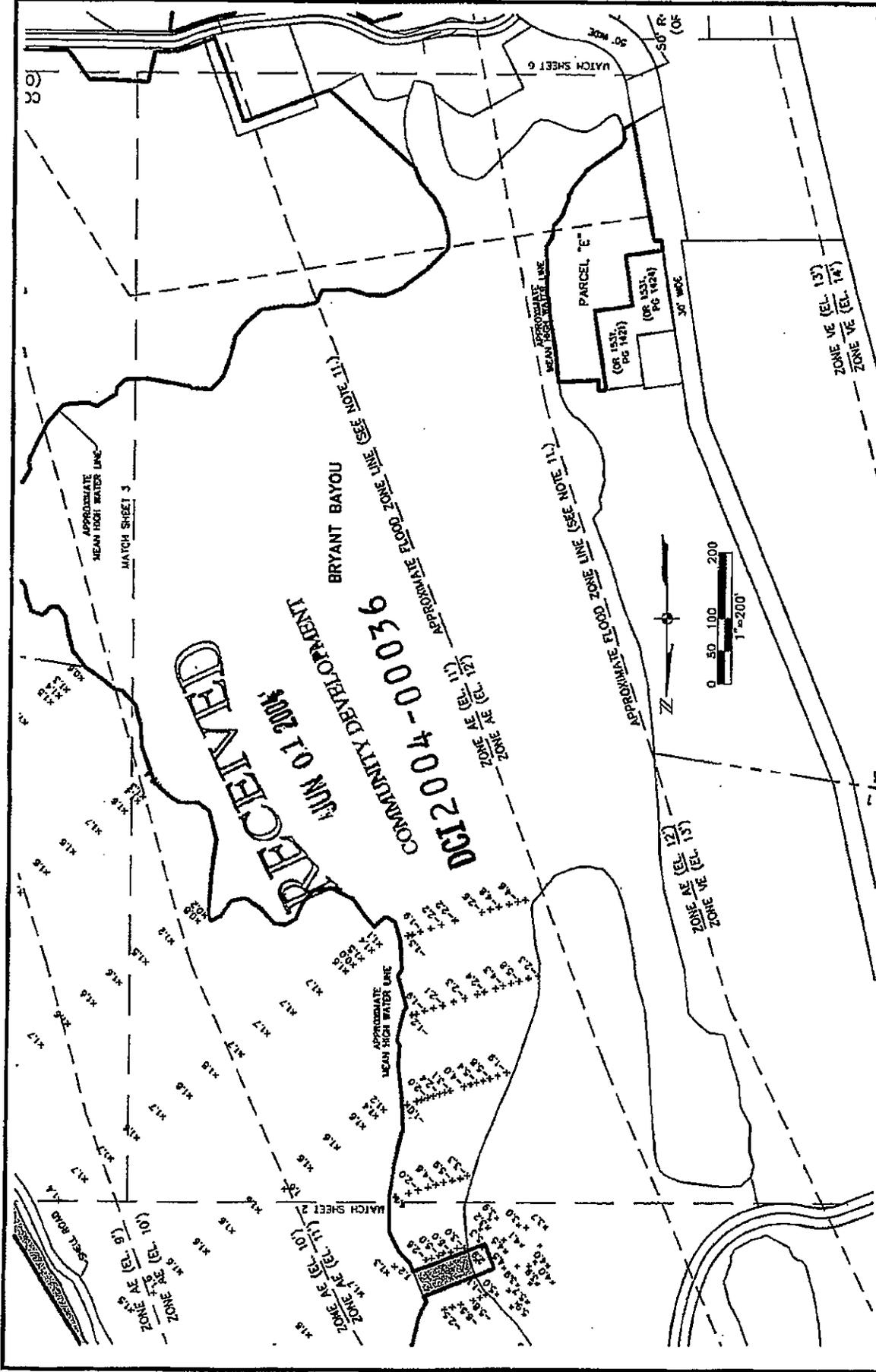
SKETCH TO ACCOMPANY DESCRIPTION  
AND SITE INFORMATION MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
02/28/04	200.33999	22-45-21	1"=200'	3 OF 6

2158 JOHNSON STREET  
P.O. BOX 1550  
FORT MYERS, FLORIDA 33902-1550  
PHONE (239) 334-0046  
FAX (239) 334-3681  
E.B. #642 & L.B. #642

**JOHNSON**  
**ENGINEERING**

PLANTATION DEVELOPMENT LTD.  
SECTION 22, 26, & 27, TOWNSHIP 45 S., RANGE 21 E  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA



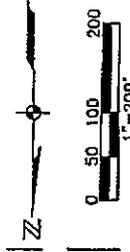
PLANTATION DEVELOPMENT LTD.  
 SECTION 22, 26, & 27, TOWNSHIP 45 S, RANGE 21 E  
 CAPTIVA ISLAND, LEE COUNTY, FLORIDA

**JOHNSON**  
**ENGINEERING**

215B JOHNSON STREET  
 P.O. BOX 1550  
 FORT MYERS, FLORIDA 33802-1550  
 PHONE (239) 334-0046  
 FAX (239) 334-3661  
 E.B. #642 & I.B. #642

SKETCH TO ACCOMPANY DESCRIPTION  
 AND SITE INFORMATION MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
02/26/04	20033899	22-45-21	1"=200'	4 OF 6



PINE ISLAND SOUND

BULKHEAD LINE AS APPROVED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS MAY 8, 1963 AND BY TITF JUNE 18, 1963. (OR 572, PG 14)

APPROXIMATE MEAN HIGH WATER LINE

ZONE AE (EL. 8')  
ZONE AE (EL. 9')

DC12004-00036

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COMMUNITY DEVELOPMENT

PARCEL "B"

UTILITY/OUT PARCEL (OR 3170, PG 177)

G.L. 1  
G.L. 4

MATCH SHEET 6

475'

CONSERVATION EASEMENT OR 1983, PG 4023

BULKHEAD LINE AS APPROVED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS MAY 8, 1963 AND BY TITF JUNE 18, 1963. (OR 572, PG 14)

MATCH SHEET 5

23 26  
22 27

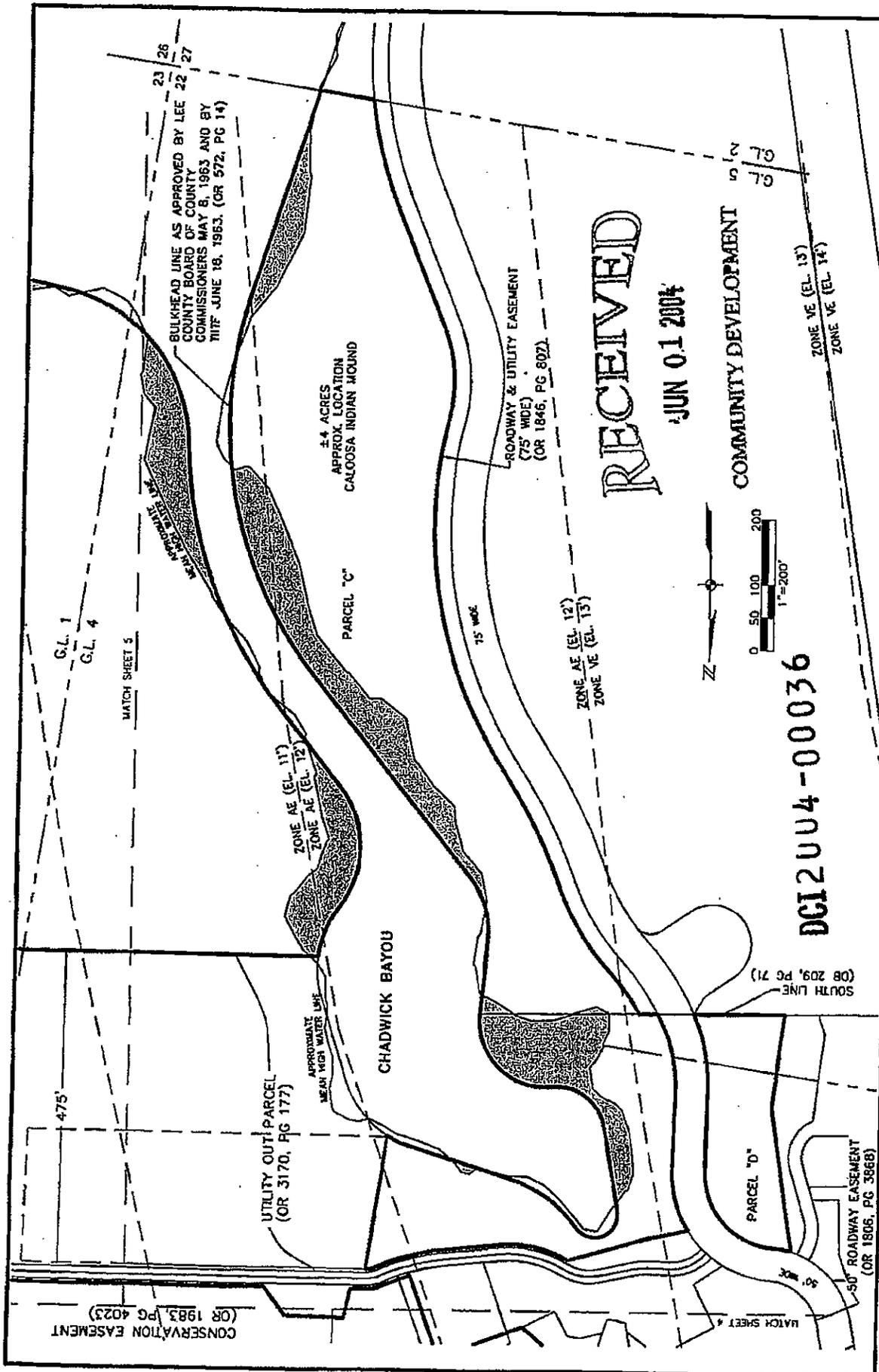
**JOHNSON ENGINEERING**

2158 JOHNSON STREET  
P.O. BOX 155D  
FORT WALKERS, FLORIDA 33902-1550  
PHONE (239) 334-0046  
FAX (239) 334-3661  
E.B. #642 & L.B. #642

SKETCH TO ACCOMPANY DESCRIPTION AND SITE INFORMATION MAP

PLANTATION DEVELOPMENT LTD.  
SECTION 22, 26, & 27, TOWNSHIP 45 S, RANGE 21 E  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

DATE	02/26/04	PROJECT NO.	20033899	FILE NO.	22-45-21	SCALE	1"=200'	SHEET	5 OF 6
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PLANTATION DEVELOPMENT LTD.  
 SECTION 22, 26, & 27, TOWNSHIP 45 S, RANGE 21 E  
 CAPTIVA ISLAND, LEE COUNTY, FLORIDA

2158 JOHNSON STREET  
 P.O. BOX 1550  
 FORT MYERS, FLORIDA 33902-1550  
 PHONE (239) 334-0046  
 FAX (239) 334-3661  
 E.B. #642 & L.B. #642

**JOHNSON**  
**ENGINEERING**

SKETCH TO ACCOMPANY DESCRIPTION  
 AND SITE INFORMATION MAP

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
02/26/04	20033899	22-45-21	1"=200'	6 OF 6



January 20, 2006

DESCRIPTION

**HARBOUR POINTE  
30'x40' ACCESS DRIVE, BRIDGE & UTILITY EASEMENT  
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST  
CAPTIVA ISLAND, LEE COUNTY, FLORIDA**

A strip of land lying in Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida, which tract or parcel is described as follows:

Commencing at the northwest corner of Harbourview Villas at South Seas Resort as recorded in Condominium Plat Book 34, Page 97, Public Records of Lee County, Florida run N 14° 04' 15" W for 28.14 feet to the southeast corner of a 20-foot roadway easement as recorded in Official Records Book 1848, Page 1816, Public Records of Lee County, Florida, and the Point of Beginning.

From said Point of Beginning run N 09° 15' 16" W along the easterly line of said easement for 30.01 feet; thence run N 79° 35' 37" E departing said easement for 93.08 feet to a point of curvature; thence run southeast along said curve to the right of radius 180.00 feet (delta 24° 33' 59") (chord bearing S 88° 07' 24" E) (chord 76.59 feet) for 77.18 feet to a point of reverse curvature; thence run northeast along said curve to the left of radius 123.00 feet (delta 56° 33' 22") (chord bearing N 75° 52' 55" E) (chord 116.54 feet) for 121.41 feet to a point of reverse curvature; thence run northeast along said curve to the right of radius 70.00 feet (delta 49° 06' 13") (chord bearing N 72° 09' 20" E) (chord 58.17 feet) for 59.99 feet to a point of tangency; thence run S 83° 17' 33" E for 15.26 feet to a point of curvature; thence run southeast along said curve to the right of radius 164.00 feet (delta 11° 01' 51") (chord bearing S 77° 46' 38" E) (chord 51.53 feet) for 31.57 feet to a point of tangency; thence run S 72° 15' 42" E for 47.56 feet to a point of curvature; thence run southeast along said curve to the left of radius 110.00 feet (delta 32° 23' 05") (chord bearing S 88° 27' 15" E) (chord 61.55 feet) for 62.17 feet to a point of tangency; thence run N 75° 21' 13" E for 87.72 feet to a point of curvature; thence run northeast along said curve to the left of radius 280.00 feet (delta 07° 14' 35") (chord bearing N 71° 43' 55" E) (chord 35.37 feet) for 35.40 feet to a point designated "A" and a point of tangency; thence run N 68° 06' 38" E along said parallel line for 144 feet, more or less, to an intersection with the Mean High Water Line along the easterly shore of said Bryant Bayou; thence run southerly meandering said Mean High Water Line for 40 feet, more or less to an intersection with a line that is 40 feet south of (as measured on a perpendicular) and parallel with the aforesaid mentioned course; thence run S 68° 06' 38" W for 144 feet, more or less, to a point of curvature and a line that bears S 21° 53' 22" E from said point designated "A"; thence run southwest along said curve to the right of radius 320.00 feet (delta 07° 14' 35") (chord bearing S 71° 43' 55" W) (chord 40.43 feet) for 40.45 feet to a point of

SCHEDULE A  
1 of 3

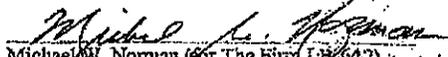
2158 Johnson Street • Post Office Box 1550 • Fort Myers, Florida 33902-1550  
(239) 334-0046 • Fax (239) 334-3661

Applicant's Legal Checked  
by BSJ 8-7-08

DCI 2004-00036

tangency; thence run S 75° 21' 13" W for 87.72 feet to a point of curvature; thence run northwest along said curve to the right of radius 150.00 feet (delta 32° 23' 05") (chord bearing N 88° 27' 15" W) (chord 83.66 feet) for 34.78 feet to a point of tangency; thence run N 72° 15' 42" W for 47.56 feet to a point of curvature; thence run northwest along said curve to the left of radius 124.00 feet (delta 11° 01' 51") (chord bearing N 77° 46' 38" W) (chord 23.84 feet) for 23.87 feet to a point of tangency; thence run N 83° 17' 33" W for 24.56 feet to a point of curvature; thence run southwest along said curve to the left of radius 40.00 feet (delta 45° 02' 55") (chord bearing S 74° 10' 59" W) (chord 30.65 feet) for 31.45 feet to a point of reverse curvature; thence run southwest along said curve to the right of radius 153.00 feet (delta 52° 30' 04") (chord bearing S 77° 54' 34" W) (chord 135.34 feet) for 140.20 feet to a point of reverse curvature; thence run northwest along said curve to the left of radius 150.00 feet (delta 24° 33' 59") (chord bearing N 88° 07' 24" W) (chord 63.82 feet) for 64.31 feet to a point of tangency; thence run S 79° 35' 37" W for 93.69 feet to the Point of Beginning.  
Parcel contains 27,991 square feet (0.64 acres), more or less.  
SUBJECT TO easements, restrictions and reservations of record.

Bearings hereinabove mentioned are based on the Condominium Plat of Harbourview Villas at South Seas Resort, Condominium Plat Book 34, Page 97, Public Records of Lee County, Florida, wherein the westerly line bears N 08° 55' 49" W.

  
Michael W. Norman (for The Firm L12642)  
Professional Land Surveyor  
Florida Certificate No. 4500

20033829 - 01-20-06 - 30'x40' Access Drive, Bridge & Utility Easement

SCHEDULE A  
2 of 3

DCI 2004-00036



**DEVELOPER/OWNER**

PLANTATION DEVELOPMENT, LTD.  
 13451 HARBORVIEW BLVD., SUITE 277  
 FORT MYERS, FL 33919  
 PHONE (888) 461-2411

**STRAP NUMBER**

PARCEL A  
 22-42-21-00-0000-0000 (7.48) PARCEL A

**SIZE OF PARCEL**

TOTAL = 74.0 ACRES  
 HARBORVIEW POINT = 22.8 ACRES  
 CONSERVATION AREA = 21.4 ACRES  
 ENTRANCE ROAD = 0.4 ACRES

**ZONING**

SSB  
 HARBORVIEW POINT INTERMEDIATE-CARE PROUDLY  
 PART OF HARBORVIEW POINT  
 (FORMER HARBORVIEW POINT)

**LEGEND**

- APPROXIMATE POOL
- EXISTING PAVEMENT
- EXISTING UTILITY
- PROPOSED UTILITY
- PROPOSED ROAD
- PROPOSED

PROPOSED ROADS AND PAVEMENT WILL BE PRIVATE NON-COUNTY MAINTAINED.

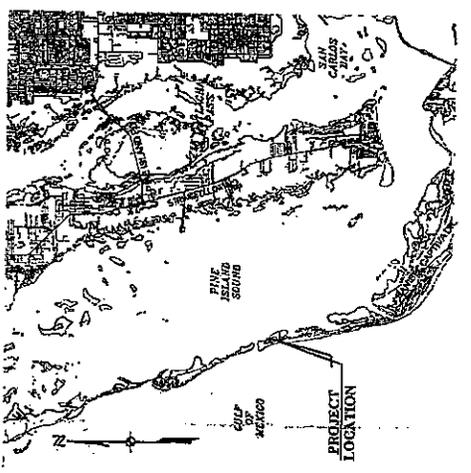
PROPOSED PRESSUR VI AREA

CONTRIBUTION TO REMAIN MAINTAINED BY THE DEVELOPER. MAINTENANCE DURING DEVELOPMENT AND PROPOSED REMAINING MAINTAINED BY THE DEVELOPER.

CHANNEL TO BRYANT BAYOU

MARINA VILLAS

HARBORVIEW VILLAS



**LOCATION MAP**  
 0 10,000 20,000  
 SCALE IN FEET

**JOHNSON ENGINEERING**

HARBORVIEW POINT  
 LEE COUNTY, FLORIDA

PLANTATION DEVELOPMENT, LTD.

MASTER CONCEPT PLAN

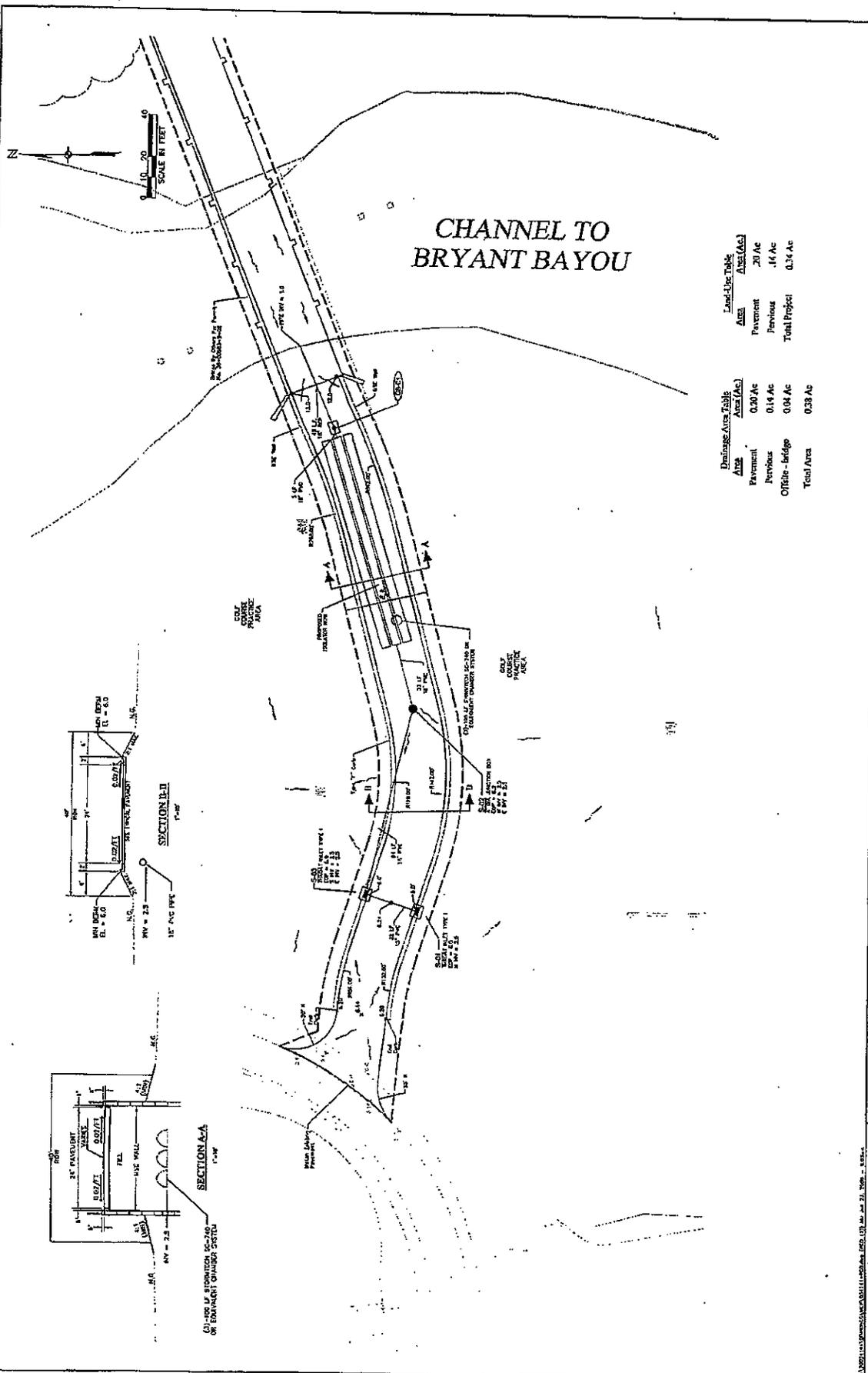
2172 JENNIFER STREET  
 FORT MYERS, FLORIDA 33907-1930  
 PHONE (888) 334-2698  
 FAX (888) 334-2698  
 CA #022 A LR #842

DATE: MAY, 2008 PROJECT NO.: 2008114 FILE NO.: 21-45-21 SCALE: 1" = 50' SHEET: 1 OF 1

**EXHIBIT B**







# CHANNEL TO BRYANT BAYOU

Land-Use Table	
Area	Area (Ac)
Pavement	20 Ac
PerVIOUS	14 Ac
<b>Total Project</b>	<b>0.14 Ac</b>

Drainage Area Table	
Area	Area (Ac)
Pavement	0.09 Ac
PerVIOUS	0.14 Ac
<b>Offsite - bridge</b>	<b>0.04 Ac</b>
<b>Total Area</b>	<b>0.38 Ac</b>

**MASTER CONCEPT PLAN  
PAVING, GRADING, AND DRAINAGE PLAN**

DATE: MAR, 2008  
PROJECT NO.: 2008144  
FILE NO.: 22-40-21  
SCALE: 1" = 30'  
SHEET: 4

**JOHNSON  
ENGINEERING**

HARBOUR-POINTE  
LEE COUNTY, FLORIDA

PLANTATION  
DEVELOPMENT, LTD.

NO.	DATE	BY	CHKD.
1			
2			
3			
4			

2122 AMERICAN STREET  
FORT MYERS, FLORIDA 33901-1800  
TEL: (888) 331-3333  
FAX: (889) 331-3333  
CA, FL, IL, IN, LA, MI, NY, OH, VA, WI, WY

**Hearing Examiner's list of Lee Plan Provisions  
Harbour Pointe MDP (Remand)**

The Hearing Examiner finds that the request, as conditioned, is consistent with the following Lee Plan provisions: *(emphasis added by Hearing Examiner)* The BOCC's actions in approving this request, with conditions, are specifically consistent with those provisions marked by "\*\*\*."

**Objective 2.1 - Development Timing** Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, *conserve land, water, and natural resources*

...

**Policy 2.1.2** New land uses will be permitted only if they are consistent with the Future Land Use Map and the goals, objective, policies, and standards of this plan.

**Objective 2.8 - Coastal Areas** Development in coastal areas is subject to the additional requirements found in the Conservation and Coastal Management element of this plan, particularly those found under Goals 105, 109, 110, 111, 112, and 113.

**Policy 5.1.2** Prohibit residential development where physical constraints or hazards exist, or *require the density and design to be adjusted accordingly. Such constraints or hazards include but are not limited to flood, storm or hurricane hazards; unstable soil or geologic conditions; environmental limitations; aircraft noise; or other characteristics that may endanger the residential community.*

**Objective 13.1 (Captiva Community Plan)** Develop and maintain incentive and/or regulatory programs to ensure the long-term protection and enhancement of wetland habitats, water quality, natural upland habitats, ...

**\*\*Policy 13.1.5** Lee County will encourage and support efforts by the Captiva community to investigate and recommend measures that will improve water quality in Pine Island Sound and the Gulf of Mexico adjacent to Captiva Island...

**Policy 13.1.12** Mangroves on Captiva Island will be protected to the greatest extent possible.

**Goal 104: Coastal Resource Protection** To protect the natural resources of the coastal planning area from damage caused by inappropriate development.

**\*\*Objective 104.1: Environmentally Critical Areas** *Within the coastal planning area, the county will manage and regulate, on an ongoing basis, environmentally critical areas to conserve and enhance their natural functions. Environmentally critical areas include wetlands (as defined in Goal 114) and*

Rare and Unique upland habitats. . . .

**\*\*Policy 104.1.1** *Development will be limited in Rare and Unique upland habitats and strictly controlled in wetlands in the coastal planning area.*

**\*\*Goal 107: Resource Management** To manage the county's wetland and upland ecosystems so as to maintain and enhance native habitats, floral and faunal species diversity, water quality, and natural surface water characteristics.

**\*\*Objective 107.1: Resource Management Plan** The county will continue to implement a resource management program that ensure the long-term protection and enhancement of the natural upland and wetland habitats through the retention of interconnected, functioning, and maintainable hydroecological systems where the remaining wetlands and uplands function as a productive unit resembling the original landscape.

**\*\*Policy 107.1.1** County agencies implementing the natural resources management program will be responsible for the following:

1. Identifying upland and wetland habitats/systems most suitable for protection, enhancement, reclamation, and conservation.

**\*\*Policy 107.1.2** To increase protection of natural resources, the County will promote the formation of a public/private management team to coordinate area wide conservation easements.

**\*\*Objective 107.2: Plant Communities** Lee County will . . . protect at various suitable locations remnant tracts of all important and representative natural plant communities occurring within Lee County.

**Policy 107.2.3** Prevent water management and development projects from altering or disrupting the natural function of significant natural systems.

**\*\*Policy 107.2.4** Encourage the protection of viable tracts of sensitive or high-quality natural plant communities within developments.

**\*\*Policy 107.2.8** Promote the long-term maintenance of natural systems through such instruments as conservation easements . . . . .

**Policy 107.2.10** Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas must protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.

**\*\*Policy 107.2.13** Promote optimal conditions rather than minimum conditions for the natural system as the basis for sound planning.

**\*\*Goal 108: Estuarine Water Quality** To manage estuarine ecosystems so as to maintain or improve water quality and wildlife diversity; to reduce or maintain current pollution loading and system imbalances in order to conserve

estuarine productivity; and to provide the best use of estuarine areas.

**Policy 108.1.2** Development affecting coastal and estuarine water resources must maintain or enhance the biological and economic productivity of these resources.

**\*\*Goal 112: Intergovernmental Coordination** To protect natural resource systems that cross governmental boundaries through intergovernmental coordination.

**Goal 113: Coastal Planning Areas** To conserve, maintain, and enhance the natural balance of ecological functions in the coastal planning area. . . .

**\*\*Objective 113.1: Coastal Planning Areas in General** Lee County will manage the coastal planning area to provide a balance among conservation of resources, public safety capabilities, and development.

**Objective 113.1.2** All development within the coastal planning area must be compatible with protection of natural systems.

**\*\*Policy 113.1.5** Lee County will protect and conserve the following environmentally sensitive coastal areas: wetlands, estuaries, mangrove stands, undeveloped barrier islands, beach and dune systems, aquatic preserves and wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, and marine grass beds.

**\*\*Goal 114: Wetlands** To maintain and enforce a regulatory program for development in wetlands that is cost-effective, complements federal and state permitting processes, and protects the fragile ecological characteristics of wetland systems.

**Objective 114.1** The natural functions of wetlands and wetland systems will be protected and conserved through the enforcement of the county's wetland protection regulations and the goals, objectives, and policies in this plan. . . .

**Policy 114.1.2** The county's wetlands protection regulations will be consistent with the following:

**\*\*1.** In accordance with F.S. 163.3184(6)(c), the county will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.

. . . . .

**\*\*3.** Lee County will incorporate the terms and conditions of state permits into county permits and will prosecute violations of state regulations and permit conditions through its code enforcement procedures.

**4.** Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through clustering of development and other site

planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.

**\*\*Goal 115: Water Quality and Wastewater** To ensure that water quality is maintained or improved for the protection of the environment and people of Lee County .

**Objective 115.1** Maintain high water quality, meeting or exceeding state and federal water quality standards.

**Policy 115.1.2** New development and additions to existing development must not degrade surface and ground water quality.

**Policy 115.1.3** The design, construction, and maintenance of artificial drainage systems must provide for retention or detention areas and vegetated swale systems that minimize nutrient loading and pollution of freshwater and estuarine systems.

**\*\*Goal 121: Fisheries Management** To preserve the ecosystem that nourishes and shelters the commercial and sport fisheries in Lee County.