

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2014-003
SMALL-SCALE AMENDMENT TO
TOWN COMPREHENSIVE PLAN FUTURE LAND USE MAP

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March 11, 2014 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the Town Comprehensive Plan to create a "TDR Sending Overlay" and apply same to the Future Land Use Map (FLUM) onto the subject area, approximately 6.52 acres, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends/does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend the Comprehensive Plan to create a "TDR Sending Area Overlay" and apply to the Future Land Use Map (FLUM) onto the subject area, approximately 6.52 acres, and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment to the Town Comprehensive Plan DOES/DOES NOT qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:
 - a. the proposed amendment DOES/DOES NOT involve a use of 10 acres or fewer; and
 - b. the cumulative annual effect of the acreage for all small scale developments adopted by the Town of Fort Myers Beach WILL/WILL NOT exceed a maximum of 120 acres in a calendar year; and
 - c. the proposed amendment DOES/DOES NOT involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

- d. the property that is the subject of the proposed amendment IS/IS NOT located within an area of critical state concern; and
2. It IS/IS NOT in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change IS/IS NOT necessary to provide for orderly future growth of the community, for the following reasons:
- a. The proposed amendment will likely have POSITIVE/NEGATIVE/NO impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: _____; and
 - b. _____; and
(etc. - as many as needed)
3. It is further recommended that, in accordance with the requirements of Section 163.3187, Florida Statutes, if this proposed change to the FLUM is made by the Town Council, that the Town Council direct the Town Staff to send copies of the notice of hearings and ordinance containing the amendment to the Town Future Land Use Map to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett	AYE/NAY	John Kakatsch	AYE/NAY
Jane Plummer	AYE/NAY	Jim Steele	AYE/NAY
Chuck Bodenhafer	AYE/NAY		

DULY PASSED AND ADOPTED THIS **11th** day of **MARCH, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

ORDINANCE NO. 14-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH APPROVING A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO CREATE A TDR SENDING AREA OVERLAY AND APPLY A TDR SENDING AREA OVERLAY TO CERTAIN PROPERTY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Section 163.3187, Florida Statutes, provide that amendments to the Town of Fort Myers Beach Comprehensive Plan (Comp Plan) which are directly related to proposed small scale development activities may approved without regard to statutory limits on the frequency of consideration of amendments to such Comp Plan; and

WHEREAS, a small-scale development amendment may be adopted only under the conditions set forth in Section 163.3187, Florida Statutes and other provisions of State and local law; and

WHEREAS, James J. Jamieson has applied to the Town for an amendment to the Comprehensive Plan to create a TDR Sending Area Overlay on the Future Land Use Map (FLUM) and apply the overlay to 266 Mango Street and 200 Chapel Street (the subject property); and

WHEREAS, the proposed amendment to the Comprehensive Plan to create a TDR Sending Area Overlay on the FLUM and a revision to the Policy on Density Transfers is attached to this Ordinance as Exhibit A and hereby incorporated by reference; and

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on March 11, 2014, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2014-03 which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida Statutes, this ordinance was introduced before Town Council on _____, 2014 and the Town Council conducted a duly noticed hearing on this ordinance on _____, 2014, at which time the Town Council considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The above “whereas” clauses are incorporated herein as though fully set forth.

SECTION 2. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER APPLICATION MEETS CRITERIA TO BE CONSIDERED FOR A SMALL-SCALE AMENDMENT. In accordance with the requirements of Section 163.187(c), Florida Statutes, the Town Council makes the following findings of fact:

- (1) the proposed amendment **DOES/DOES NOT** involve a use of 10 acres or fewer;
- (2) the cumulative annual effect of the acreage of all small scale amendments adopted by the Town of Fort Myers Beach **DOES/DOES NOT** exceed a maximum of 120 acres in a calendar year;
- (3) the proposed amendment **DOES/DOES NOT** involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section;
- (4) the property **IS NOT** located in an “area of critical state concern”;
- (5) It **IS/IS NOT** in the best interest of the health, safety and welfare of the Town’s residents and property owners for the Town Council to make this change to the FLUM and such change **IS/IS NOT** necessary to provide for orderly future growth of the community; and
- (6) Applicant’s application **DOES/DOES NOT** meet the statutory requirements to be considered for a small-scale amendment.

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW. The Town Council finds that the proposed FLUM amendment **IS/IS NOT** clearly in the best interest of the health, safety and welfare of the Town’s residents, businesspersons and property owners and such change **IS/IS NOT** necessary to provide for orderly future growth of the community, for the following reasons:

The proposed amendment will likely have a **POSITIVE/NEGATIVE** impact on affected traffic, utilities, other services, and future capital expenditures.

SECTION 4. AMENDMENT OF COMPREHENSIVE PLAN FUTURE LAND USE MAP. The Council hereby **GRANTS/DENIES** applicants’ request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to

send copies of the public notice for the Council hearing as well as a copy of the amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

SECTION 6. EFFECTIVE DATE. In accordance with the requirements of Section 163.3187, Florida Statutes, this ordinance shall become effective upon the expiration of 31 days after its adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining this Ordinance is in compliance.

SECTION 7. CONFLICTS. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

SECTION 8. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Jo List and seconded by Councilmember Bob Raymond and, upon being put to a vote, the result was as follows:

Alan Mandel, Mayor	<u>AYE/NAY</u>	Joe Kosinski, Vice Mayor	<u>AYE/NAY</u>
Dan Andre	<u>AYE/NAY</u>	Jo List	<u>AYE/NAY</u>
Bob Raymond	<u>AYE/NAY</u>		

DULY PASSED AND ENACTED this ____ day of _____, 2014.

ATTEST: TOWN OF FORT MYERS BEACH

_____	BY: _____
Michelle D. Mayher, Town Clerk	Alan Mandel, Mayor

Approved as to legal form by:

Fowler White Boggs
Town Attorney

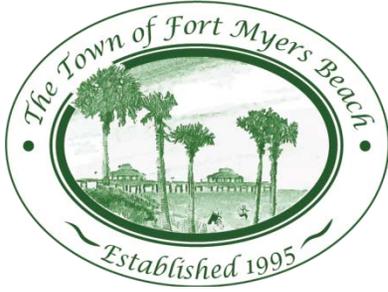
Exhibit A

Policy 4-B-15: The Transfer of Development Rights (TDR) Sending Area Overlay is an environmentally sensitive area consisting of 40 platted lots of record within the Seagrape Subdivision. Dwelling units may be transferred from lots within this Overlay area to any parcel in the Pedestrian Commercial, Boulevard, or Mixed Residential Future Land Use Map categories within the Town of Fort Myers Beach regardless of the maximum density that would otherwise be permitted by the Future Land Use Map category for the receiving parcel upon compliance with the procedures set forth below in order to create a net environmental benefit to the Town:

- i. Upon conveyance of a lot or lots in the Transfer of Development Rights Sending Area Overlay by warranty deed to the Town, which deed shall contain a restriction that the property shall not be developed, the Town will issue a TDR certificate to the property owner for an equal number of TDR units. The TDR certificate is assignable or transferable through the process described below.
- ii. TDR receiving areas may only be designated through the use of the planned development zoning process for the receiving parcel.
- iii. TDRs may be used to transfer either residential or hotel/motel units. The number of hotel/motel units which may be transferred will be computed using the hotel/motel density equivalency factors in the Land Development Code for the receiving parcel.
- iv. Rezoning applications which contemplate the use of TDRs must identify the number of TDRs requested and must include either TDR certificates or written authorization from a property owner in the TDR Sending Area Overlay authorizing the use of the requested number of TDR units.
- v. All planned development zoning approvals which include the use of TDRs must specify the number of approved TDR units.
- vi. Development order applications for projects which contemplate the use of TDRs must include valid TDR certificates for the requested number of TDR units.

Policy 4-C-8 - Density Transfers: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- i. The transfer is clearly in the public interest, as determined by the Town Council;
- ii. The parcels affected by the transfer are in close proximity to each other;
- iii. The density of residential or hotel/motel units being transferred is based upon the allowable density levels in the category from which the density is being transferred;
- iv. The transfer is approved through the planned development rezoning process for the sending and receiving parcel; and
- v. Binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.
- vi. The application of the TDR Overlay on the Future Land Use Map shall be an alternative to the process described in Policy 4-B-15.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Comprehensive Land Use Map Amendment & Text Amendment

CASE NUMBER: CMP2013-0001

LPA HEARING DATE: March 11, 2014

LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Matthew Uhle, agent
James J. Jamieson, owner

Request: A request to amend the Fort Myers Beach Comprehensive Plan to create a TDR Sending Area Overlay and apply same to applicant's property, consisting of 40 platted residential lots of record in the Seagrape Subdivision.

Subject property: Seagrape Subdivision, Block B, Lots 12-27 less the north 7 ft, together with parcel lying 80 ft to the east, and Block C, Lots 6-15 and 32-45, less the north 7 ft of 15 & 32, as recorded in the Public Records of Lee County, Florida at Plat Book 4, Page 17.

Physical Address: 266 Mango Street & 200 Chapel Street, Fort Myers Beach, FL 33931

STRAP #: 19-46-24-W3-0120C.0060 & 19-46-24-W3-0120B.0120

FLU: Wetlands

Zoning: Environmentally Critical

Current use(s): Vacant

Adjacent zoning and land uses:

North:	EC zoning, wetlands FLU, preserve area for Seagrape Bay Condominium
South:	RM zoning, Mixed Residential FLU, single-family homes
East:	Canal, then RC zoning, Mixed Residential FLU, single-family homes
West:	Mango Street, then RM zoning, Mixed Residential FLU and platted overlay, single-family and duplex homes

II. RECOMMENDATION

Staff recommends that Town Council create a Policy 4-B-15 and amend existing Policy 4-C-8 concerning Transfer of Development Rights. The Future Land Use Map should also be amended to designate the subject property as a TDR Sending area. The text of the recommended comprehensive plan amendments are as follows:

Policy 4-B-15: The Transfer of Development Rights (TDR) Sending Area Overlay is an environmentally sensitive area consisting of 40 platted lots of record within the Seagrape Subdivision. Dwelling units may be transferred from lots within this Overlay area to any parcel in the Pedestrian Commercial, Boulevard, or Mixed Residential Future Land Use Map categories within the Town of Fort Myers Beach, regardless of the maximum density that would otherwise permitted by the Future Land Use Map category for the receiving parcel, upon compliance with the procedures set forth below in order to create a net environmental benefit to the Town:

- i. Upon conveyance of a lot or lots in the Transfer of Development Rights Sending Area Overlay by warranty deed to the Town, which deed shall contain a restriction that the property shall not be developed, the Town will issue a TDR certificate to the property owner for an equal number of TDR units. The TDR certificate is assignable or transferable through the process described below.
- ii. TDR receiving areas may only be designated through the use of the planned development zoning process for the receiving parcel.
- iii. TDRs may be used to transfer either residential or hotel/motel units. The number of hotel/motel units which may be transferred will be computed using the hotel/motel density equivalency factors in the Land Development Code for the receiving parcel.
- iv. Rezoning applications which contemplate the use of TDRs must identify the number of TDRs requested and must include either TDR certificates or written authorization from a property owner in the TDR Sending Area Overlay authorizing the use of the requested number of TDR units.
- v. All planned development zoning approvals which contemplate the use of TDRs must specify the number of approved TDR units.

- vi. Development order applications for projects which include the use of TDRs must include valid TDR certificates for the requested number of TDR units.

Policy 4-C-8 - Density Transfers: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- i. The transfer is clearly in the public interest, as determined by the Town Council;
- ii. The parcels affected by the transfer are in close proximity to each other;
- iii. The density of residential or hotel/motel units being transferred is based upon the allowable density levels in the category from which the density is being transferred;
- iv. The transfer is approved through the planned development rezoning process for the sending and receiving parcel; and
- v. Binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.
- vi. The application of the TDR Overlay on the Future Land Use Map shall be an alternative to the process described in Policy 4-B-15.

III. BASIS AND FINDINGS OF FACT:

Policy 4-B-9 of the Town's Comprehensive Plan states:

"Wetlands": a conservation district applied to all remaining wetlands. The maximum density of residential development here is 1 dwelling unit per 20 acres. Other allowable uses, if compatible with wetland functions, are passive recreation, walking access to tidal waters (boardwalk and docks), and restoration of degraded habitats. Prohibited activities include placement of fill material, dredging of boat basins and channels; placement of seawalls or other shoreline stabilization; and removal of native vegetation.

Policy 4-C-8 states:

Density Transfers: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- vii. The transfer is clearly in the public interest, as determined by the Town Council;
- viii. The parcels affected by the transfer are in close proximity to each other;
- ix. The density of residential or hotel/motel units being transferred is based upon the allowable density levels in the category from which the density is being transferred;

- x. The transfer is approved through the planned development rezoning process; and
- xi. Binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.

Policy 4-C-10 states:

Map Amendments: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.

Policy 5-A-5 states that due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach comprehensive plan.

Objective 6-B, Wildlife and Native Habitats, states: Improve the viability of existing native coastal and upland habitats and establish additional areas for nature preserve and conservation uses.

Policy 6-B-5 discusses **Adjacent Development** and states: Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.

Policy 6-B-9, Acquisition of Additional Sites states: The town will strive to expand the opportunities for conservation and public appreciation of natural resources through acquisition of additional areas with rare or unique ecological or botanical features, or which provide access to such areas, through activities such as the following:

- i. Identify specific sites that would be desirable for public acquisition;
- ii. Support the efforts of other entities acquiring land that will contribute to the conservation effort (for example, aquatic preserve buffer areas, Bunche Beach, etc.)
- iii. Consider alternative means of land acquisition, such as supporting the efforts of non-profit conservation land trust or acquiring development rights in lieu of full acquisition.
- iv. Accept donations of land for nature preserves or other resource conservation areas with the following general conditions: if such lands contain ecologically valuable habitat and/or if public ownership of such lands would expand existing or provide increased preservation or resource conservation areas.

- v. When acquiring property, determine the best entity to be responsible to implement a long-range management plan.

Objective 6-D, Wetlands, states: Preserve all remaining wetlands; protect them from further degradation; and improve their condition and natural functions.

The objectives and policies detailed above will be furthered by the proposed comprehensive plan amendment. Wetland areas will be protected and acquired by the Town, in consideration for the development rights being transferrable to an alternate site within the town. This will add preservation areas within the town, protect conservation lands from having adjacent development, all while maintaining a net neutral impact on density within the Town. The subject property's 40 platted residential lots will be transferred to other more urban location(s) within the town, where roads and utilities are in place to support the development. The Mango/Chapel/Tropical Shores neighborhoods will benefit by knowing the parcel will remain open space in perpetuity.

IV. STAFF DISCUSSION

Introduction:

The subject property consists of 40 platted lots of record in the Seagrape Subdivision, which was platted and recorded in the Public Records of Lee County in June of the year 1919. A copy of Plat Book 4, Page 17 is attached hereto as Exhibit A. The property also contains a strip of land approximately 80 feet in width and approximately 813 feet in length, adjacent to the canal.

Many years ago, a network of mosquito ditches was dug through certain areas of the property. The applicant has provided a map (attached as Exhibit B) indicating the areas of surface water on the property, along with areas deemed wetlands or uplands. This map also shows easements across portions of the property that became a dedicated nature trail.

The property was formerly zoned Residential Multiple-Family (RM-2) before the Town incorporated and adopted its own Official Zoning Map. On the Lee County Future Land Use Map, however, the property has been depicted as Wetlands since adoption of the Lee Plan in 1984. The conflicting zoning and Future Land Use designations were resolved by Town Council by adoption of the Official Zoning Map when the property's zoning was changed to Environmentally Critical to be consistent with the Wetlands FLU category.

In 1989, the nearby Seagrape Bay Condominium was developed, which was originally intended to be a larger development than what has actually been developed. A portion of the subject property, 21 of the 40 platted lots, is encumbered by a conservation easement (attached as Exhibit C) granted to the Florida Department of Environmental Regulation, an agency which has now become

the Florida Department of Environmental Protection (FDEP). The easement language, however, does not forever prohibit future development, but it does require written consent from the Department of Environmental Regulation for any development of the property. The applicant does not intend to develop the subject property, but asserts that this language did not remove the original density from that portion of the subject property that is encumbered by the conservation easement. The reason the property was encumbered by the conservation easement was because the density was intended to be severed from the 21 lots in order to develop Phase III of the Seagrape Bay Condominium. Since the 3rd phase was never constructed, an argument can be made that the property still has all of its development rights.

The property owner and a partner purchased the Chapel Street property in April 2002 and the Mango Street property in May 2002. Mr. Jamieson bought out his partner in 2009 and is now the sole owner of both parcels.

The requested small scale comprehensive plan amendment proposes to do the following: Amend the Comprehensive Plan text relating to Transfer of Density Rights to create a TDR Sending Overlay and apply the overlay to the applicant's property. A Transfer of Development Rights program recognizes that a property has development rights, but that it is not in the best interest of the general public to have a particular property developed. The transferring of development rights to a more suitable location for development provides an economic incentive to the property owner to not pursue development activities on the environmentally sensitive site, and transfer those development density units to a more suitable location where urban services are adequate and available to serve the development.

Small Scale Amendment Criteria:

The applicant has presented his request as a "small scale" amendment to the comprehensive plan and its Future Land Use Map. The "small scale" terminology occurs in State law provisions relating to comprehensive planning, and is not directly related to any formal Town policy. A small scale amendment may be approved without regard for the statutory limits on the frequency of consideration of amendments, which would otherwise limit the Town to two groups of amendments per calendar year. State law provides for several conditions that an amendment must meet in order to qualify for this exception. The proposed amendment must meet the following, which are provided by Section 163.3187(c), Florida Statutes:

- (1) The proposed amendment involves a use of 10 acres or fewer and:
- (2) The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government does not exceed a maximum of 120 acres in a calendar year.
- (3) The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan,

but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

- (4) The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1).

After analyzing the applicant's request, and considering the fact that the Town has not amended its Comprehensive Plan and its Future Land Use Map in the previous 12 months, and the fact that no part of the Town is located in an "area of critical state concern," staff concludes that the applicant's request meets all of the statutory criteria set forth above.

Comprehensive Plan Background:

After local comprehensive planning became mandatory in Florida in the mid-1980s, Lee County adopted its first comprehensive plan in 1986. Lee County had adopted zoning regulations since 1962, so the Lee Plan and Future Land Use Map (FLUM) came after years of zoning. Lee Plan FLUM categories and previously existing zoning districts were not always completely consistent. The Lee Plan had to resolve the conflicts between a tradition of nearly 25 years of zoning that was enacted without a comprehensive plan that was based on the most recent data and community input.

The subject property was platted in 1919 as part of the Seagrape Subdivision, with lots measuring 50 feet in width and 110 feet in depth. By the time Lee County adopted zoning regulations in 1962, these lots were classified as multiple-family based on the small size of the lots and the density that could, therefore, be developed in a small area, and were given a Residential Multiple-Family zoning designation, RM-2. When the Lee Plan was adopted in 1986, the perception that the property was unbuildable because it was too wet became the property's designation, and the entire acreage was added to the Wetlands Future Land Use category. Exhibit B shows that much of the property is found to be wetlands, but portions of the property are also uplands.

Adjacent zoning and existing land uses:

Properties on Mango Street are zoned Residential Multifamily (RM) and are situated in the Mixed Residential FLUM category and included in the "platted overlay." They are predominantly single-family and duplex dwelling units, with the exception of the

Seagrape Bay Condominium at the terminus of Mango Street which is a residential condominium building 5 stories in height.

Situated between the subject property and the Estero Bay is a property preserved as part of the Seagrape Bay Condominium. The zoning is Environmentally Critical (EC) and FLUM is wetlands. This property is also located in the Seagrape Subdivision and had its residential density severed to support the Seagrape Bay Condominium development.

Across a canal to the South is Tropical Shores Way and a collection of single-family homes zoned Residential Conservation (RC) and in the Mixed Residential FLUM category.

Between the subject property and Estero Boulevard there is a collection of single-family homes, a bed and breakfast, a restaurant, a retail store, and the Chapel By The Sea. Most of the properties are zoned RM, with Commercial Boulevard zoning on the restaurant and retail properties, plus Institutional zoning for the Chapel By The Sea. Most of the properties are located in the Mixed Residential FLUM category with the platted overlay, while the Chapel and retail store are in the Boulevard FLUM category.

Plan Consistency:

Comprehensive plan Policy 4-C-8 provides for density transfers, but it does not include a policy for identifying areas from which density would be transferred. The Policy also does not set forth a mechanism for recognizing TDRs unless/until they are being transferred to another property. This makes it very difficult for a property owner of a potential sending parcel to market his/her available TDR units to a potential developer that needs additional density to make a redevelopment project viable. The proposed amendment would resolve both of those issues.

Policy 5-A-5 states that the Town commits to a policy of no additional density island-wide, and the proposed application would be consistent with that goal. The property owner contends that he owns 40 platted residential lots, which are no different from any other lot on Mango or Chapel streets. In an effort to keep the property undeveloped, staff recommended that the property owner consider making an application to recognize the property as a TDR sending area that would give the owner an economic incentive to keep the property undeveloped, and accommodate redevelopment in other, more urban areas of the Town.

Policy 6-B-9 provides for acquisition of additional sites for natural habitat and conservation. Upon conveyance of a lot or lots in the Sending Area Overlay by warranty deed to the Town, the Town will issue a TDR certificate to the property owner for an equal number of TDR units. The property, therefore, will become Town-owned without any monetary outlay by the Town to purchase the property. The property owner will be compensated by a third party when the TDR certificates

are assigned to a redevelopment project through the Planned Development rezoning process. Town Council maintains control of where the TDR units are assigned, and the public is involved in the public hearing process. This process truly is a public benefit, not just a benefit to the property owner.

Conclusion:

The proposed amendment to the comprehensive plan would accomplish several objectives of the Town. First, it would preserve 40 undeveloped platted lots that might otherwise be developed in the future. By remaining undeveloped, the natural and beneficial functions of the wetlands and open space continue to contribute to the health and wellbeing of the natural environment in Fort Myers Beach. The availability of TDR units to be used in other areas of the Town become a great incentive for future redevelopment efforts for properties that might otherwise remain non-compliant with current building and life safety codes.

The comprehensive plan provides for density transfers, and includes guidelines for accomplishing a transfer of development rights. It does not provide a mechanism to identify transferrable units, which the proposed amendment seeks to create in a TDR Sending Area Overlay. This allows the property owner of a sending area parcel to more effectively market their transferrable units to owners of potential redevelopment properties in the Town. For these reasons, staff recommends **APPROVAL** of the requested comprehensive plan amendments to the text of the plan and the application of a TDR Sending Area Overlay to the subject property.

Exhibits:

- A – Seagrape Subdivision, Plat Book 4, Page 17
- B – Applicant’s map of wetland determination
- C – Conservation Easement

Petition to Vacate
 Description: For name change
 Avocado Ave to Chapel St
 Date for Approval: 05/21/52
 CCMB: 11 Page: 429

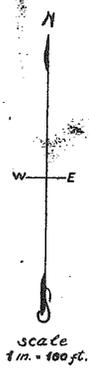
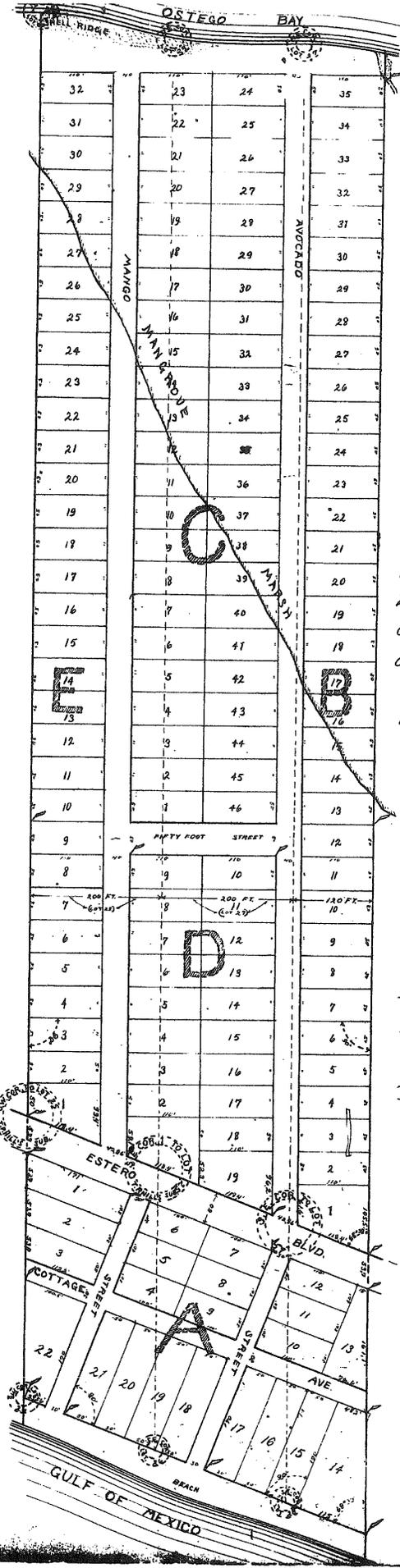
SEAGRAPE

Being a Subdivision of Lots 25-26-27
 28 and the West 120 Feet of Lots 29 and 30
 of T.P. Hill's Subdivision of Gov't. Lots 2-3
 and 4 in Section 19 T_p. 16 S.-R. 24 E.

Estero Island

E.E. DAMKÖHLER AND C.S. FICKLAND, OWNERS

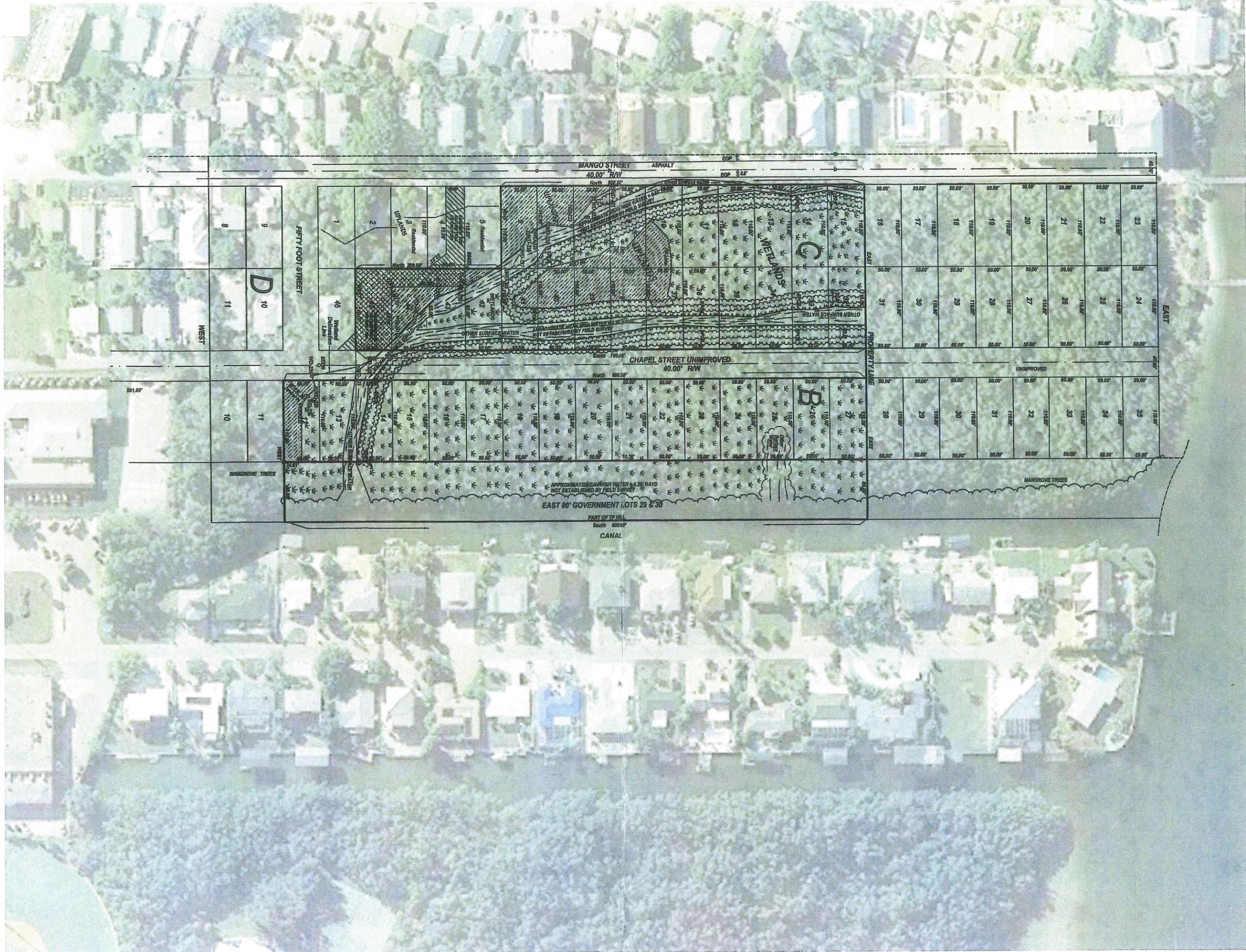
2 1/2" IRON PIPE SHOWN - F



SUBDIVIDED
 JUNE 1939
 BY
 H.K. DAVIDSON, ENG.

Petition to Vacate
 Petition No: 84-13
 Description: Vacation b/wm Block C&D
 Date of Approval: 10/24/84
 CCMB: 151 Page: 43

Walter Johnson
 Block C & D, 1st
 C.M.B. 151 14 43



CONSERVATION EASEMENT

Exhibit C

3355

STATE OF FLORIDA
COUNTY OF LEE

2746009

Doc. No. 55
Intangible Tax Pd.
By [Signature] CHARLES KELLEY, CLERK, LEE COUNTY
Deputy Clerk

RECORD MGR. - CHARLES KELLEY, CLERK
8 W. J. WALKER, P.O. 8

OR2108 PG3876

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of issuance of State of Florida Department of Environmental Regulation permit number 361528035 in the name of Sea Grape Bay Development Corp. and other good and valuable considerations, the receipt of which is hereby acknowledged, Sea Grape Bay Development Corp., Charles S. Kelley, Lerria Higgins, Trustee and Citizens and Southern National Bank of Florida ("Grantors") has bargained, sold, conveyed and granted to the State of Florida Department of Environmental Regulation ("Grantee"), 7451 Golf Course Boulevard, Punta Gorda, Florida 33950-9350, a conservation easement in accordance with Section 704.06, Florida Statutes (198), in and over the following described real property in Lee County, Florida:

EXHIBIT A

This easement conveys to the "Grantee" a perpetual interest in the property, consisting of the following affirmative and negative covenants on the part of the "Grantor" and "Grantee" successors and assigns:

- a) No construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures of any kind whatsoever on or above the ground on the property shall be undertaken without prior written consent of the "Grantee".
- b) No dumping or placing of soil or other substance whatsoever or dumping or placing of trash, waste or unsightly or offensive material on the property.
- c) No removal or destruction of native trees, shrubs, or other vegetation on the property.
- d) No excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface on the property.
- e) No surface use except for purposes that permit the land or water area to remain predominantly in its natural condition on the property.

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OCT 27 1994
SOUTH DISTRICT

f) No activities detrimental to drainage, flood control, water management, water conservation, water quality, erosion control, soil conservation or fish or wildlife habitat preservation on the property.

g) No acts or uses detrimental to such retention of land or water areas on the property.

Provided, however, that this easement does not preclude the following specific activities from being undertaken on the subject property as authorized pursuant to the above referenced Permit Number 361528035:

Drainage Structures and Swales which intrude into the Westerly 10 feet of the Easement Area adjacent to Mango Street, as defined on Lee County Final Development Order 8-3-84 dated 1-21-87, Ink Engineering Drawing 83131. Intrusion consists of concrete overflow pipe and Spreader swales from stormwater retention areas West of Mango Street, two concrete pipes and spreader swales from interceptor swales for areas West of Mango Street, surface storm water drainage from Easterly half of Mango Street Roadway Paving.

In the event of violation of any covenant contained in this Conservation Easement, the "Grantee" shall be entitled to pursue all available legal and equitable remedies, including injunction.

In signing this Conservation Easement, the Grantor hereby acknowledges that there is no mortgage nor outstanding liens nor encumbrances on the property except for Citizens and Southern National Bank construction loan for Mango Street Utility and Road Construction described in Exhibit A and attached hereto and herein-after referred to as the "property".

GRANTORS:

OB Johnson President
Sea Grape Bay Development Corp.

Charles S. Kelley
Charles S. Kelley

Lerrin Higgins Trustee
Lerrin Higgins - Trustee

Citizens and Southern National Bank of Florida
Citizens and Southern National Bank of Florida

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SOUTH DISTRICT

OR2108 PG3877

State of ILLINOIS
City of _____
County of LAKE

on this 8th day of SEPTEMBER, 1989 before me, the
undersigned, a Notary Public in and for the State of ^{ILLINOIS} ~~Florida~~, duly
commissioned and sworn, personally appeared CHARLES S. KELLEY

to me known to be the person(s) who executed the within and foregoing
instrument and acknowledged to me that such he (she) (they) executed
the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my
official seal the day and year first above written.

Linda L. Coak
Notary Public in and for the ^{9. 8. 89}
State of Illinois

OR2108 PG3878

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OCT 27 1994
SOUTH DISTRICT

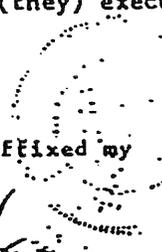
State of Florida
City of Fort Myers
County of Lee

on this 10 day of October, 1989 before me, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared O. B. Thompson
AND LEXIA HIGGINS, TRUSTEE

to me known to be the person(s) who executed the within and foregoing instrument and acknowledged to me that such he (~~she~~) (they) executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC, STATE OF FLORIDA;
MY COMMISSION EXPIRES: FEB. 22, 1992.
BOUNDED THROUGH NOTARY PUBLIC UNDERWRITERS.


Alfred Higgins
Notary Public in and for the
State of Florida

OR2108 PG3879

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OCT 27 1994

SOUTH DISTRICT

State of FLORIDA
City of FT. MYERS
County of LEE

on this 11TH day of OCTOBER, 1989 before me, the undersigned, a Notary Public in and for the State of Florida, duly commissioned and sworn, personally appeared _____
MICHAEL E. LYAN

to me known to be the person(s) who executed the within and foregoing instrument and acknowledged to me that such he (she) (they) executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affixed my official seal the day and year first above written.

Richard Beckman
Notary Public in and for the
State of FLORIDA

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: MAY 6, 1991.
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

OR2108-PG3880

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SOUTH DISTRICT

ACCEPTED:

By Philip R. Edwards

By Robert K. Smith

Date of Acceptance: 10/19/90

State of Florida

City of Fort Myers

County of Lee

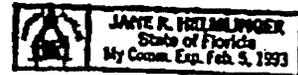
on this 19th day of November, 1989 before me, the undersigned, a Notary Public in and for the State of Florida duly commissioned and sworn, personally appeared _____

Philip R. Edwards

to me known to be the person(s) who executed the within and foregoing instrument and acknowledged to me that such he (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Jane R. Schindler
Notary Public in and for the
State of Florida



OR2108 PG3881

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OCT 27 1994
SOUTH DISTRICT

EXHIBIT A

LEGAL DESCRIPTION

A TRACT OR PARCEL OF LAND BEING LOTS 9 THROUGH 38 INCLUSIVE, BLOCK C AND LOTS 21 THROUGH 35 INCLUSIVE, BLOCK B OF SEA GRAPE, A SUBDIVISION IN SECTION 19 TOWNSHIP 46 SOUTH, RANGE 24 EAST, ESTERO ISLAND AS RECORDED IN PLAT BOOK 4, PAGE 17 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A TRACT OR PARCEL OF LAND BEING THE EASTERLY 80 FEET OF LOT 29 OF T. P. HILLS SUBDIVISION AS RECORDED IN PLAT BOOK 3 PAGE 84 OF THE PUBLIC RECORDS OF LEE COUNTY, LYING NORTHERNLY OF THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 21 BLOCK B OF SAID SEA GRAPE, A SUBDIVISION, AND A TRACT OR PARCEL OF LAND LYING NORTHERNLY OF LOT 35 BLOCK B, AND CHAPEL STREET (AVOCADO STREET PLAT) LYING SOUTHERLY OF THE WATERS OF ESTERO BAY (OSTEGO BAY PLAT) OF SAID SEA GRAPE ~~AV~~ SUBDIVISION.

082108 PG3882

CHARLIE GREEN LEE CITY FL
89 NOV 13 PM 4:21

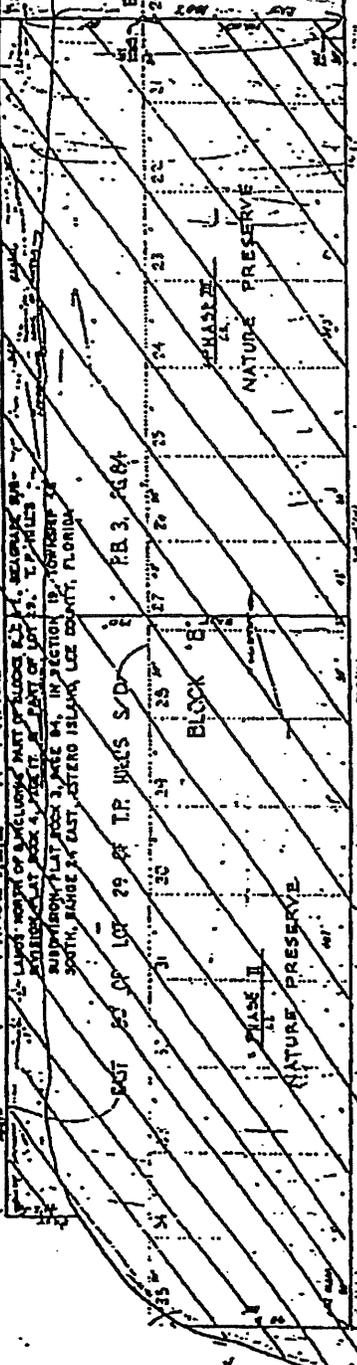
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SOUTH DISTRICT

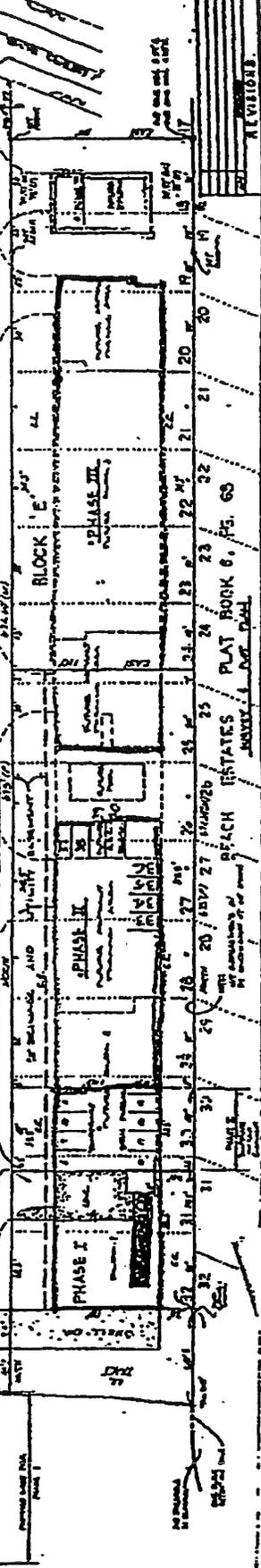
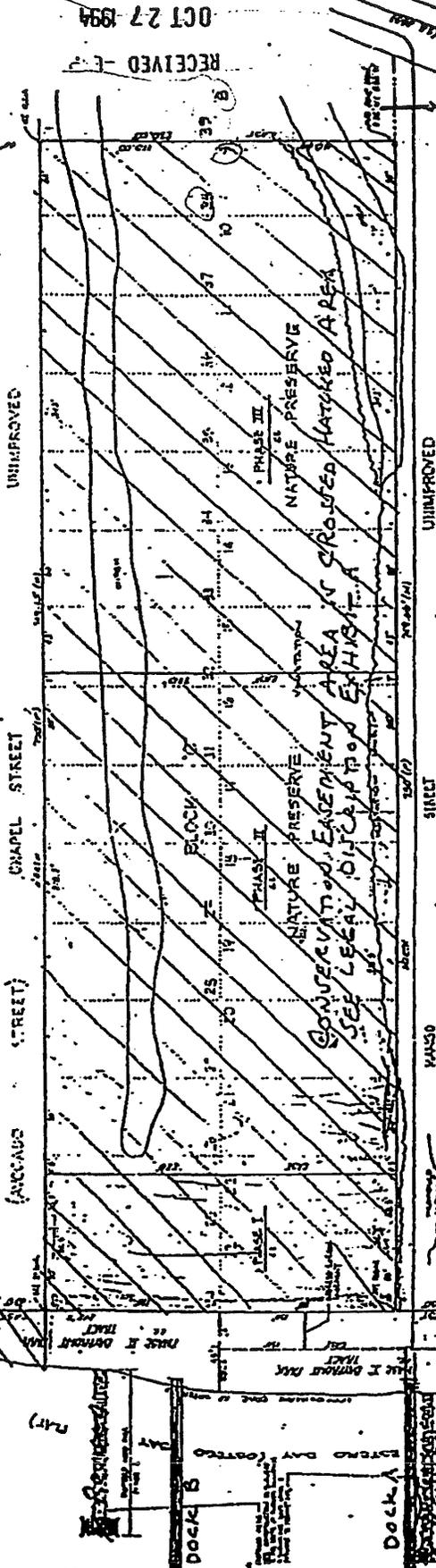
DATED APRIL 28, 1994
JOB NO. 8908A-1
SHEET 1 OF 3

PHASE I, II A PHASE CONDOMINIUM . LOT 31



NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
6. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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8. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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10. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.



OCT 27 1994
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E 20 LOT 29 M

FB 3, 2084

TR WILKS S/D

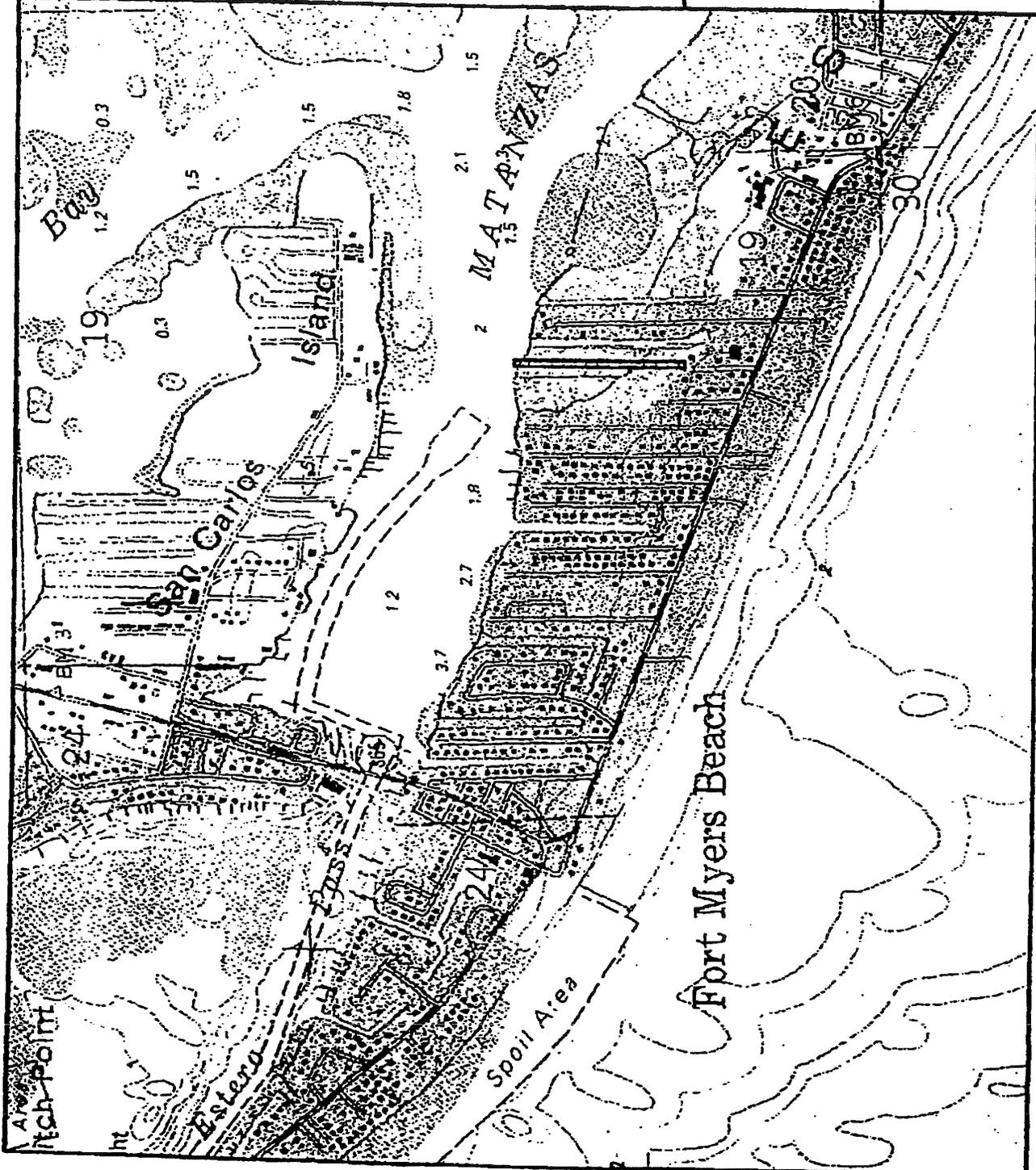
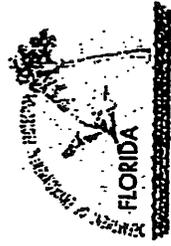
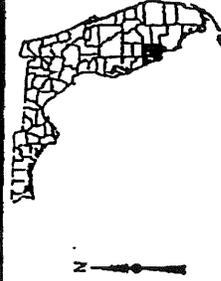
PLAT BOOK 6, P. 65

**Conservation Easement
361528035**

 Conservation Easement

The area displayed on this map surrounds one or more Florida Department of Environmental Protection Conservation Easements associated with water resource management permits issued prior to 1992.

The Conservation Easement boundaries were created using legal descriptions in the Department's historical records and are for display purposes to verify their location. Any other use is not advised. For more information please contact Kathleen Swanson at (850) 921-9920.



OGC CONSERVATION EASEMENT 8833369

