



EXHIBITS

from HEX hearing

CASE #: DRI 2001-00005

CASE NAME: River's Edge

Attach a copy of this form to the top of packet of the exhibits & place exhibits in case file.

ARE THERE ANY BOARD EXHIBITS? 5 YES NO

LOCATION OF BOARDS:

If there are any board exhibits, attach another copy of this form to boards for identification purposes.

PAUL K. OWEN
SENIOR ECOLOGIST

Current Responsibilities:

Specific responsibilities include project management, all aspects of environmental permitting, environmental studies, preparation of mitigation, maintenance, and monitoring plans and permit compliance. Procures environmental permits (local - city and county, state - WMD, FDEP, FFWCC, and federal - USACOE, USEPA-NPDES, USSWF), conducts mitigation analysis, design, construction plans, contract management, conservation easements, inspection, and monitoring; obtains official jurisdictional determinations from the USACOE, WMD, and FDEP; conducts Protected Species and Submerged Land Surveys; prepares Due Diligence reports and maps and Obtains Protected Species take and relocation permits; prepares proposals and bids.

Experience:

Over ten years of working in Florida's upland and wetland environments including eight years as project manager in environmental permitting in Central and South Florida. Prior experience with engineering and environmental consulting firms in Southwest Florida. Supervised various water quality and biological monitoring programs in marine and estuarine waters. Experienced with ecosystem and water budget computer modeling. Specific knowledge and experience with American Alligator Regulations as well as Gopher Tortoise, Indigo Snake, Scrub Jay and protected plant issues and management. Expert in mitigation design and compliance as well as Florida's flora and fauna.

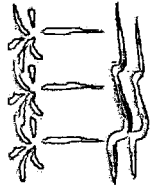
Education:

M.S. - Systems Ecology, University of Florida, 1993

B.S. - Wildlife Ecology/Forestry/Zoology, University of Florida, 1991

Affiliations:

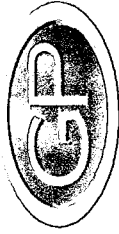
Professional Wetland Scientist #1102, Society of Wetland Scientists; Professional Mangrove Trimmer, State of Florida; Certified Wildlife Biologist, The Wildlife Society; Wetlands Certificate, University of Florida's Center for Wetlands and Water Resources; Florida Association of Environmental Professionals Active Member.



PALMAS DEL SOL

at Gulf Harbour Yacht & Country Club

Mangrove System Management



Grasse Pointe

DEVELOPMENT COMPANY INC.

Land Planning
Morris-Depew Associates, Inc.

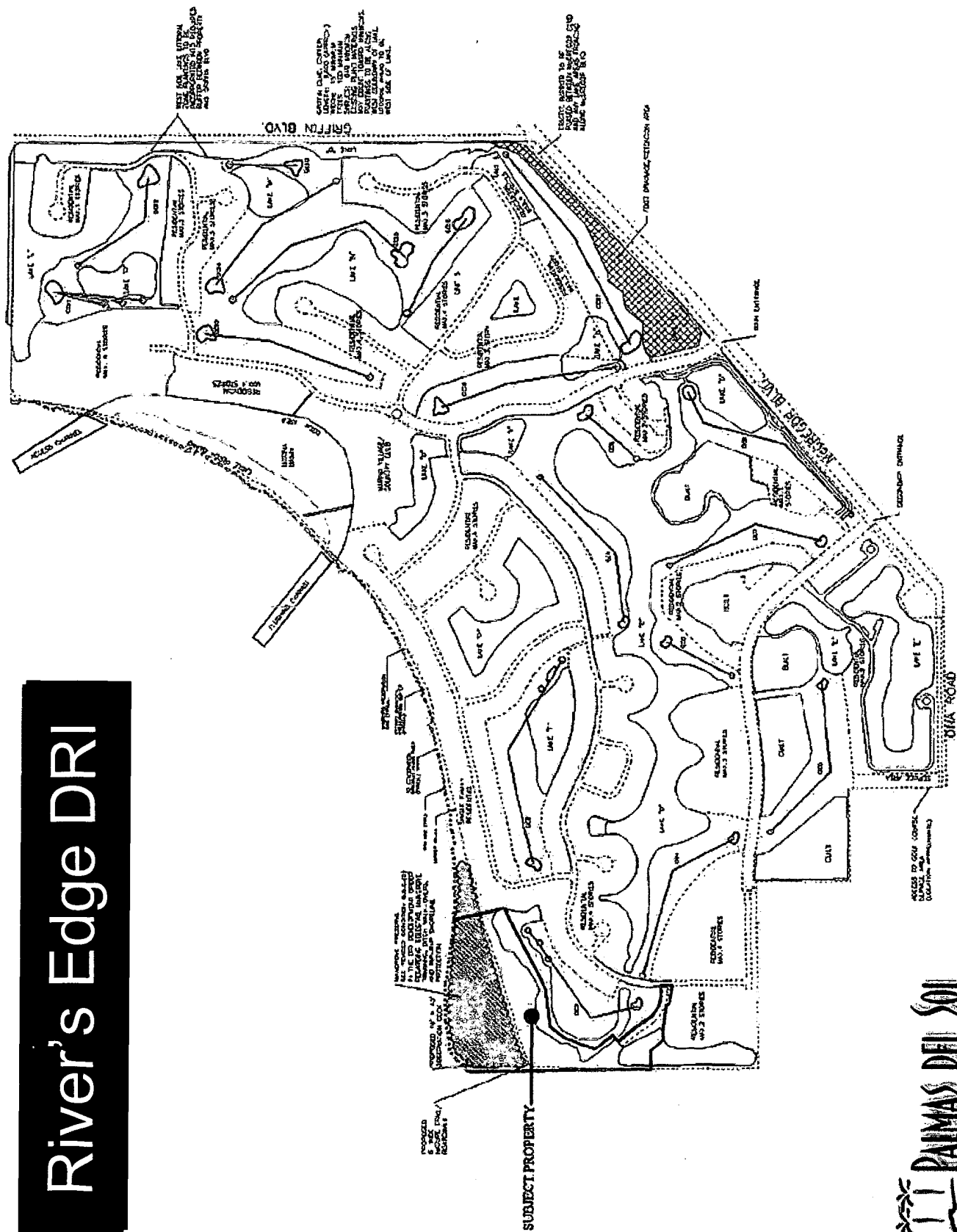
Land Use Law
Roetzel & Andress, PA

Environmental Sciences
*W. Dexter Bender &
Associates, Inc.
Raphael J. Araujo, MS
Roy R. Lewis III, CEP, PWS
Peggy Grant*

Graphics
*Land Architectural
Technologies, Inc.
(Conceptus)*

June 2002

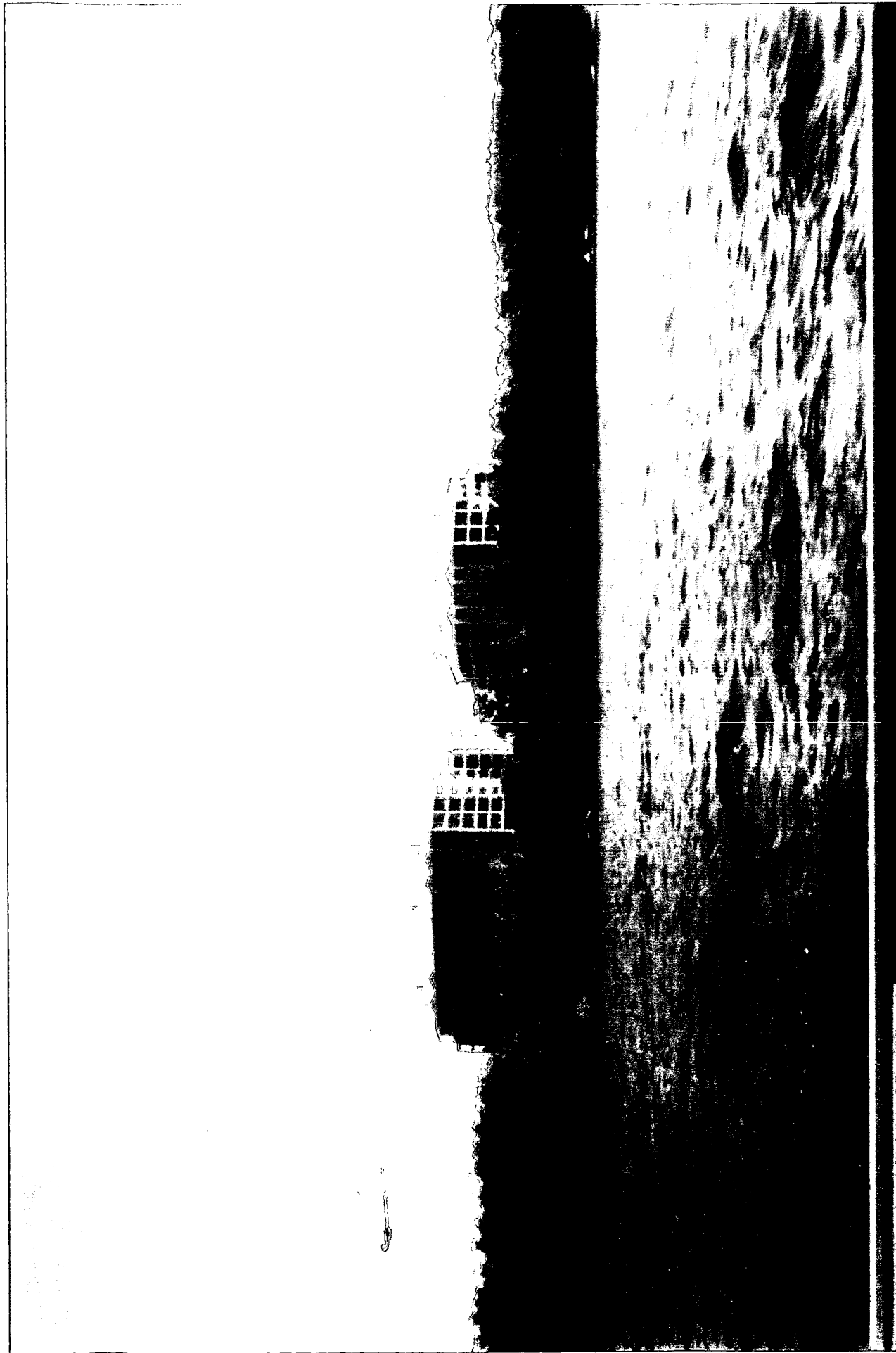
River's Edge DRI



Today's Presentation

- Site Conditions
- Proposed Management
 - Mangrove Trimming
 - Boardwalk and Observation Deck
 - Rip Rap Sill
 - Moon Vine Management
 - Monitoring
 - Off-Site Mitigation Parcel

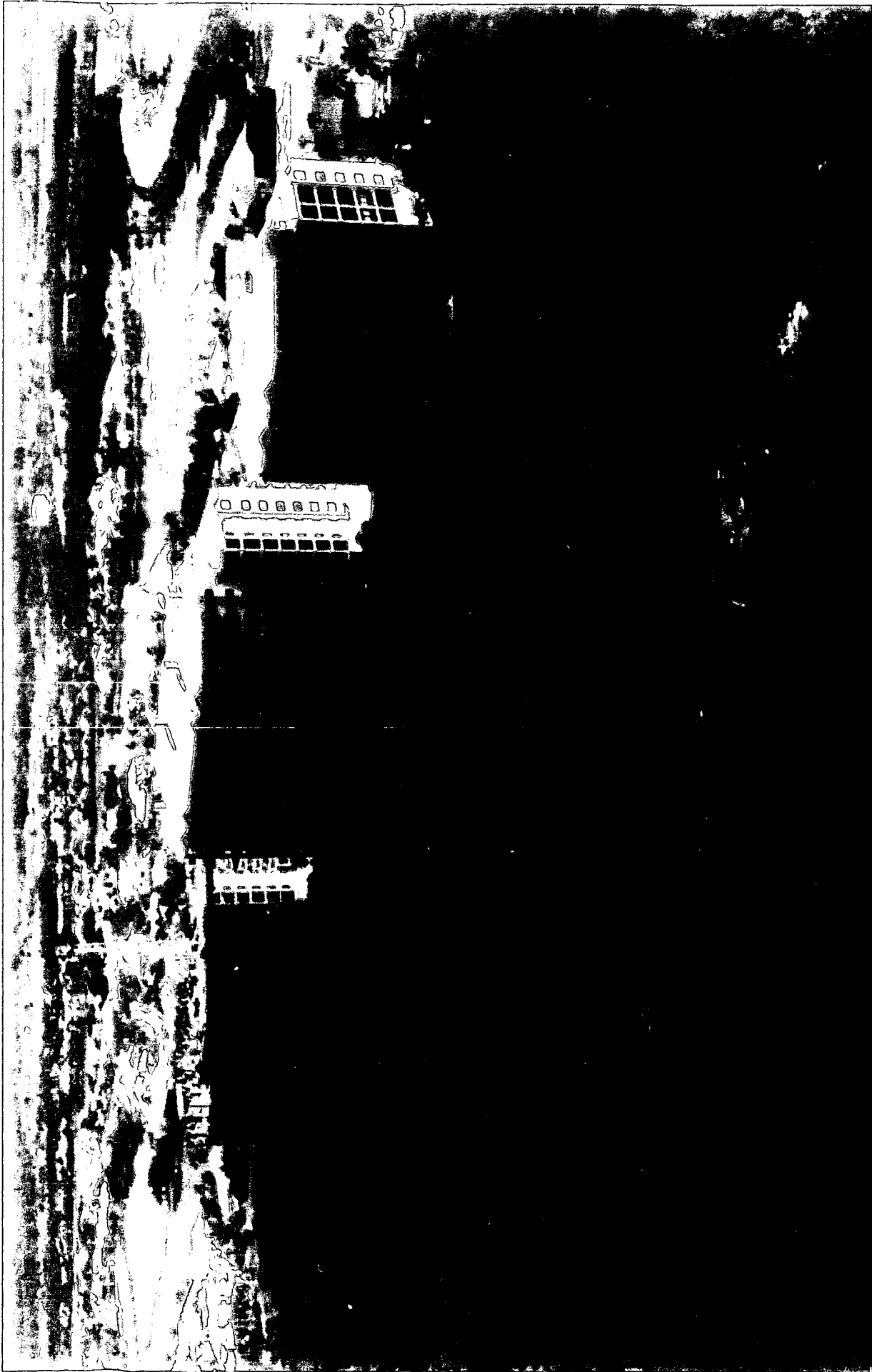




Mangrove System

View from Shoreline



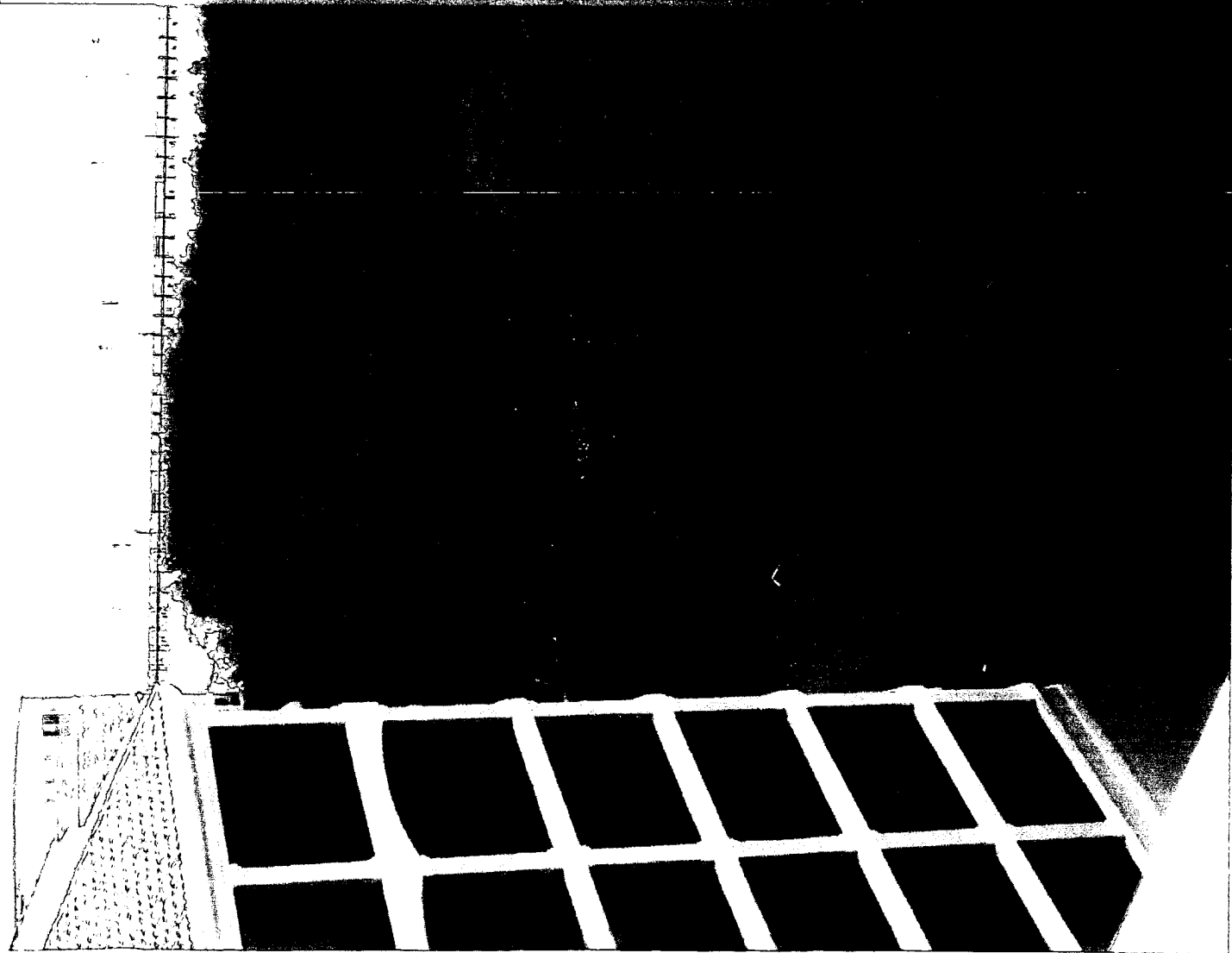


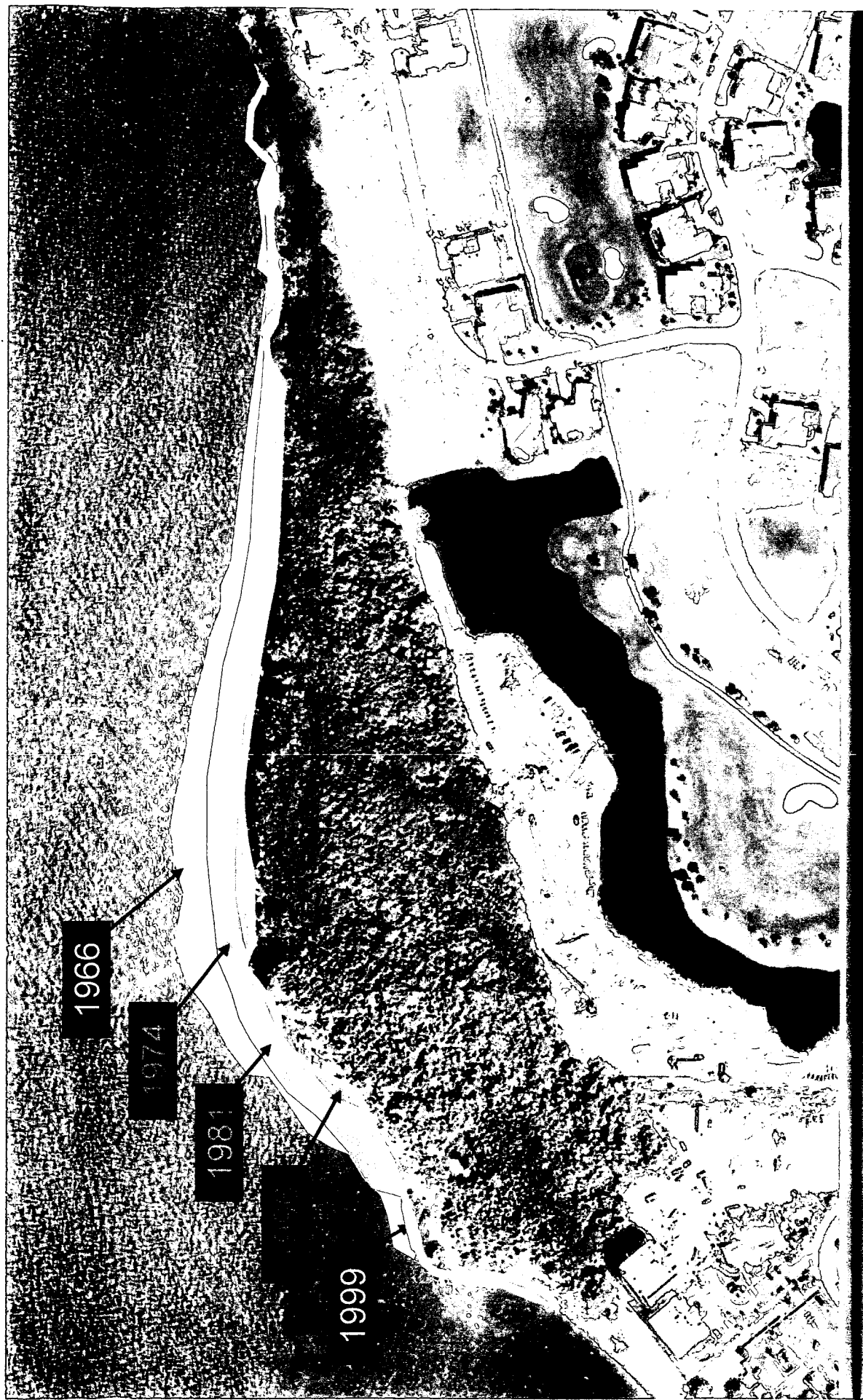
Project Site Introduction

 PALMAS DEL SOL

Mangrove System

Introduction

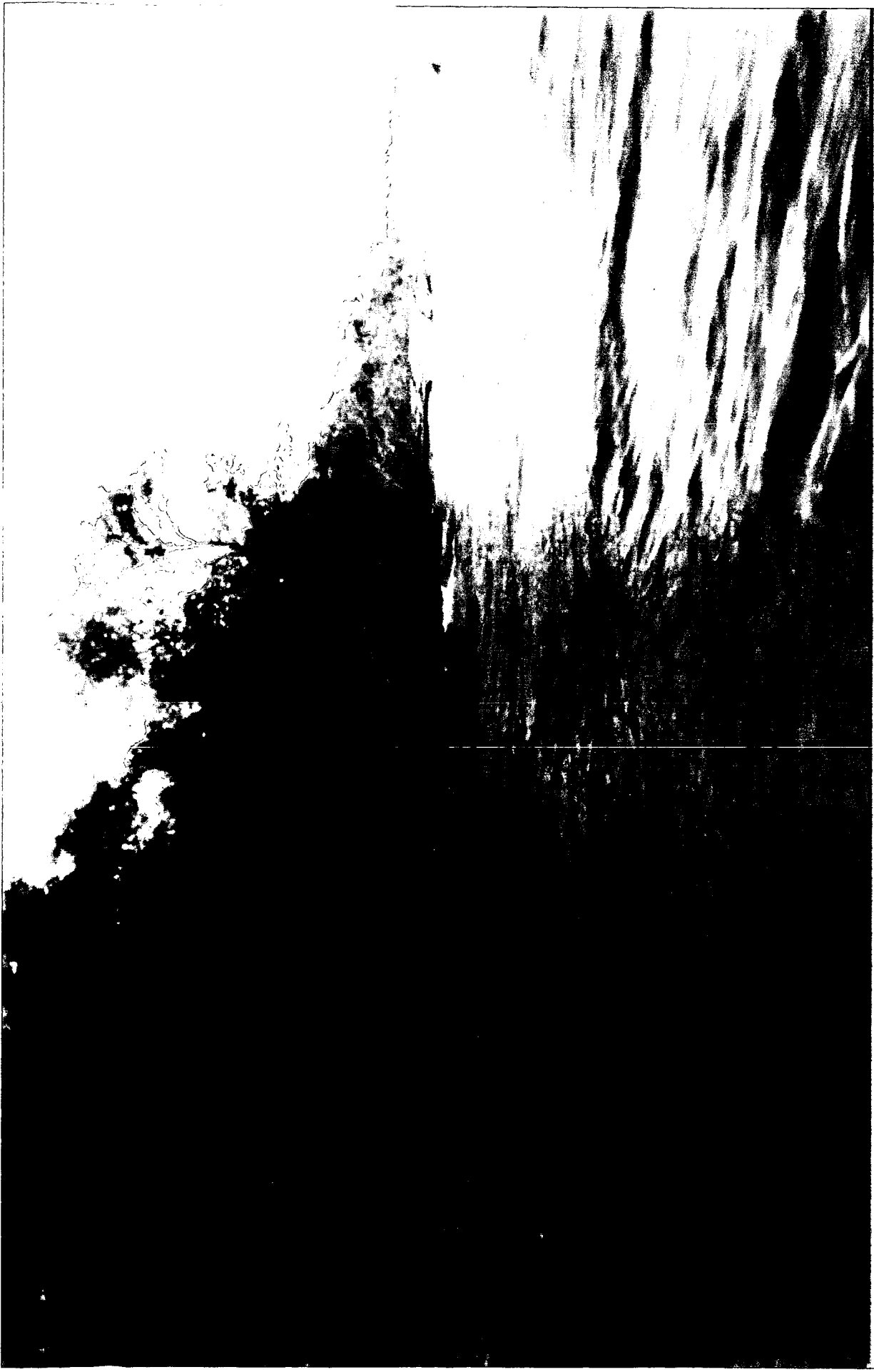




Historical Shoreline

From 1966 to 2002





Mangrove Shoreline

View South





Mangrove Shoreline

View North



Coastland Erosion

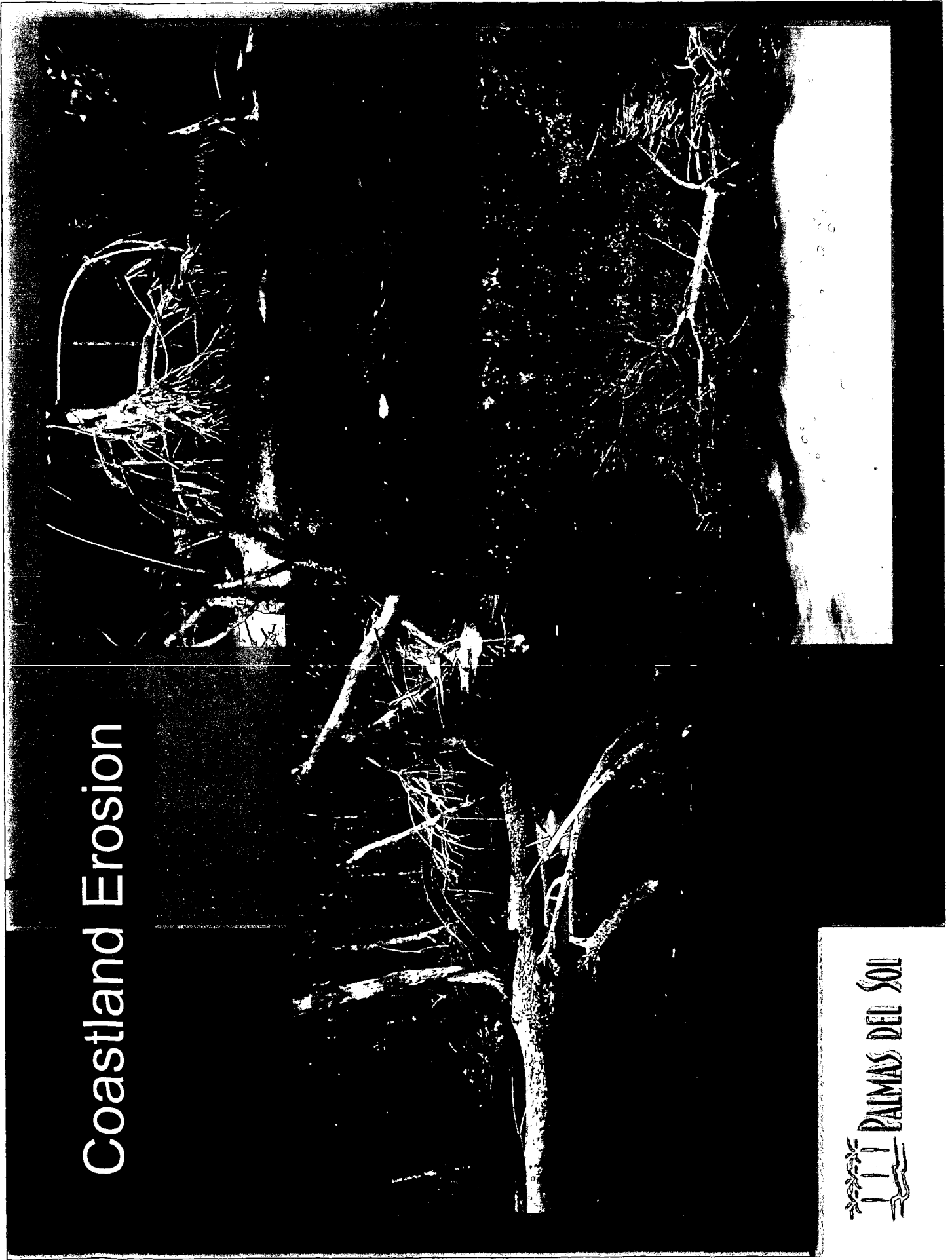


THE PALMAS DEL SOL



Coastland Erosion

III PAIMAS DEL SOL



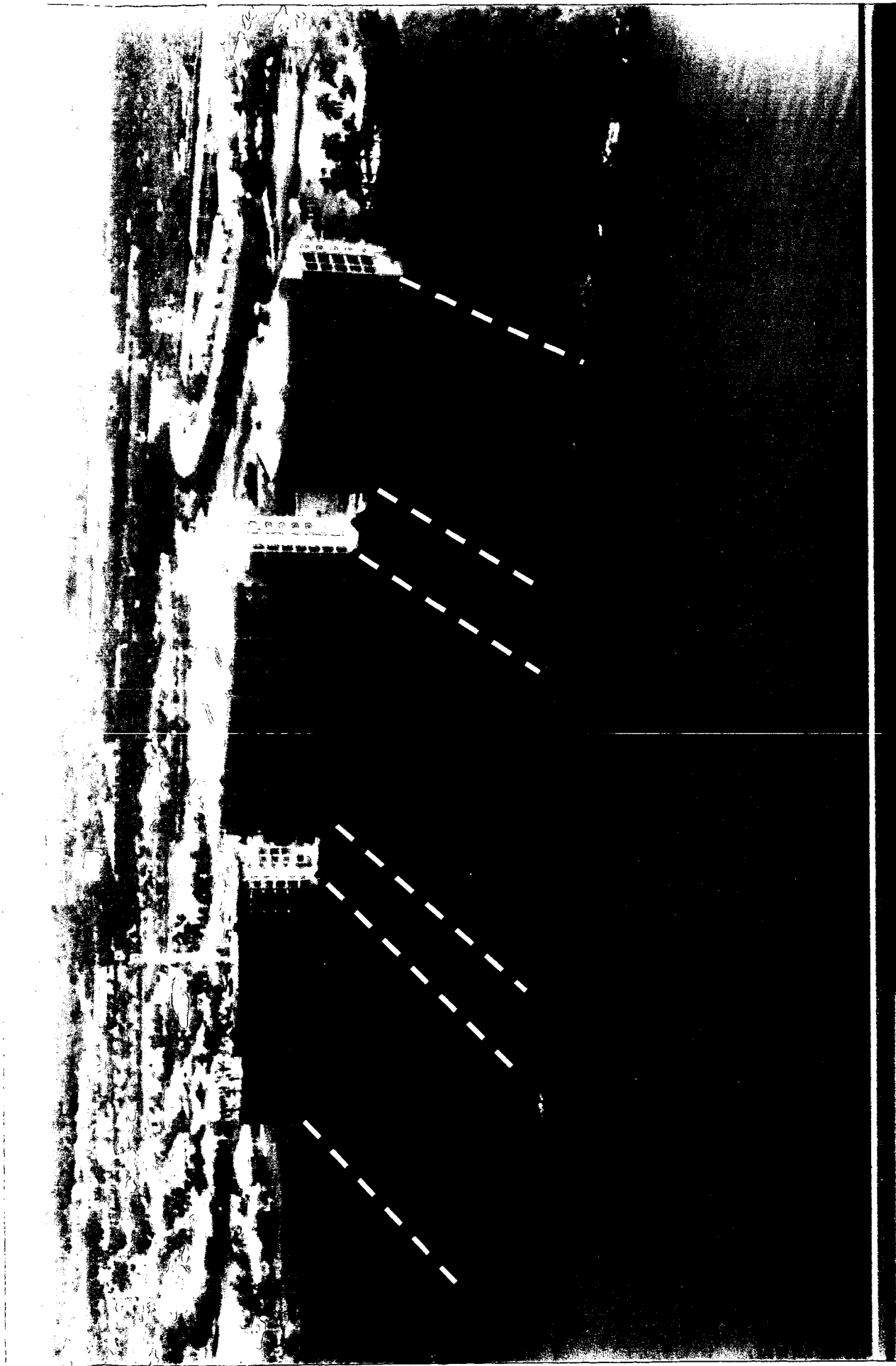
Proposed Mangrove Management

Site Conditions

Proposed Management

- Mangrove Trimming
- Boardwalk and Observation Deck
- Rip Rap Sill
- Moon Vine Management
- Monitoring
- Off-Site Mitigation Parcel





Mangrove Trimming Corridors





0 100 200
SCALE FEET

Source: U.S. Army Corps of Engineers

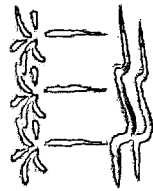


LAND USE CLASSIFICATION: 612 (MANGROVE SWAMP)
SOILS: TYPE 23 (WULFERT MUCK)
AREA: 11 ACRES (+/-)



Off-Site Mitigation Parcel

11 AC. Mangrove Swamp



PALMAS DEL SOL

at Gulf Harbour Yacht & Country Club

Mangrove System Management



Grosse Pointe

DEVELOPMENT COMPANY INC.

Land Planning
Morris-Depew Associates, Inc.

Land Use Law
Roetzel & Andress, PA

Environmental Sciences
*W. Dexter Bender &
Associates, Inc.*

*Raphael J. Araujo, MS
Michael J. Marshall, PhD*

*Roy R. Lewis III, CEP, PWS
Peggy Grant*

Graphics
*Land Architectural
Technologies, Inc.
(Conceptus)*

May 2002

River's Edge aka Gulf Harbour

DRI Notice of Proposed Change

Palmas del Sol

PROJECT NARRATIVE

July 2002

Prepared by:

**W. Dexter Bender & Associates, Inc.
2052 Virginia Avenue
Fort Myers, FL 33901**

APPLICANT'S EXHIBIT

#8
DRI2001-00005

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EXISTING CONDITIONS

Existing Site Conditions

Currently the 10.2 acre Mangrove Preserve area owned by Grosse Pointe Associates, Ltd. (GPAL) (Exhibit D) consists of three distinct zones of mangroves as follows:

Please see the attached Existing Conditions Map (Exhibit A).

Zone A

This area is located on the shoreline of the Caloosahatchee River and is dominated by red mangroves (*Rhizophora mangle*) with scattered black mangroves (*Avicennia germinans*) and a few white mangroves (*Laguncularia racemosa*) and is approximately 50-75' wide in the western 1/3 of the 10.2 acre portion of Tract E shoreline. The eastern 2/3 of the shoreline has a one red mangrove tree wide band with the exception of a clump of red mangroves that is approximately 100' long and 50' wide. The trees in Zone A have the following heights:

5% - 45-50' NGVD
40% - 32-45' NGVD
55% - <32' NGVD

There are approximately 50 red mangrove trees in this zone that have portions of branches that are greater than 1" in diameter that are above 32' NGVD.

The trees situated along the shoreline have healthy upper canopy lateral branches with significant leaf coverage.

Zone B

This area is situated in the middle of the 10.2 acre portion of Tract E and is dominated by black mangroves with scattered red and white mangroves. This zone ranges between 170' and 380' in width. This is the dominant zone of the 10.2 acre portion of Tract E. The trees in this zone have the following heights:

10% - 40'-50' NGVD
40% - 32-40' NGVD
50% - <32' NGVD

Zone C

This area is dominated by white mangroves and includes scattered black mangroves and a few (~10) red mangroves. This area is a 40'± wide band along the landward portion of the Mangrove Preserve. The trees in this zone are the following heights:

20% - 40'-50' NGVD
50% - 32'-40' NGVD
30% - <32' NGVD

The red mangroves in this area are less than 35' NGVD.

There is a significant amount of the invasive native plant Moon vine (*Ipomoea sp.*) growing along the landward edge of this zone that has completely covered several mangrove trees and is likely to spread into the rest of the preserve if left unmanaged.

Shoreline

The shoreline of the Mangrove Preserve has been experiencing significant erosion since the 1960's due to increased boat traffic and the resulting boat wakes along the Caloosahatchee River. Please see the attached Shoreline Loss Map (Exhibit B). The Shoreline Loss Map was created using a 1944 USDA Natural Resource Conservation Service Map and 1966, 1974, 1981, 1990, 1996, and 1999 Lee County Aerial Photographs. This map shows a digitized shoreline for Tract E for the years mentioned above, superimposed over the 1999 aerial photograph.

Between 1944 and 1966, there does not appear to be any significant shoreline loss. Between 1966 and 1999, the shoreline loss averaged 94' or 2.7'/yr. measuring along the east, middle, and west of the 10.2 acre portion of Tract E. Please see the attached pictures which show dead mangroves fallen in the river along the shoreline as well as exposed roots due to erosion. Based on the fact that there was no significant shoreline loss between 1944 and 1966, and significant and consistent erosion between 1966 and 1999, it is reasonable to conclude that boat traffic is the cause. Without the installation of riprap, the shoreline is expected to continue to erode. There are no requirements to place riprap on the shoreline.

PROPOSED MANAGEMENT

Proposed Management

The project team has gone to a lot of effort to research the subject of mangrove trimming and has full confidence that the proposed trimming will have no negative effects on the mangroves or the ecosystem, and the proposed rip rap shoreline stabilization will protect a preserve in danger of further erosion.

The Florida Department of Environmental Protection (FDEP) regulates trimming of mangroves. There are three types of mangrove permits, exempt, general, and individual. The exempt and general permits are issued automatically as long as the project meets certain criteria such as heights of mangroves, width of the mangrove fringe and proposed cutting techniques. Individual permits are issued to projects that do not meet those criteria and the review is intense. This project qualified for a general mangrove trimming permit and one was quickly issued.

Mangrove Trimming

1. Three (3) corridors, each the width of the buildings (240', 244', and 152' wide), and extending from the landward boundary described in Exhibit C North Northwest to the Caloosahatchee River will have selective mangrove trimming and maintenance as described as follows and is shown on Exhibit D.
2. All mangrove trimming shall be conducted as permitted by the FDEP General Mangrove Permit File No. 36-0152741-003 (Exhibit E), which includes but not limited to the following conditions:
 - a. Mangrove Trimming shall be supervised or conducted exclusively by a Professional Mangrove Trimmer.
 - b. No herbicide or other chemical shall be used for the purpose of removing leaves of a mangrove.
 - c. Trimming shall be conducted in stages so that no more than 25% of the foliage is removed annually, and the height and configuration of the mangroves trimmed under these general permits may be maintained.
 - d. The final height of trimmed mangroves to be maintained shall be 32' NGVD (approximately 30'± from substrate) and shall only be in the mangrove trimming areas shown in Exhibit D. As many of the trees in the mangrove trimming areas are less than 32' NGVD in height, approximately 30% of the area will not be initially trimmed. These trees that are now less than 32' NGVD in the mangrove trimming areas will be trimmed as they exceed 32' in the future to maintain that elevation.
3. As to red mangroves, trimming is limited on the main trunk to branches above 32' NGVD with a diameter of 1" or less. All other branches above 32' NGVD will be trimmed in compliance with the FDEP Permit. There are relatively few red mangroves and they are

located along the edge of the shoreline. This special guideline was developed so that the main trunks of red mangroves will remain and because red mangroves have been found in the literature to be more sensitive to cutting larger branches. Black and white mangroves have been found in the literature to be much more tolerant and are able to be trimmed much more than what is proposed. It is important to note that this condition is not required anywhere in Lee County or in the State. Not all of the mangroves in the trimming corridors need to be initially trimmed as approximately 30% are less than 32' NGVD. These trees will be maintained at 32' NGVD as they grow.

4. Once the final configuration and height (32' NGVD) is achieved, the trimming corridors will be maintained by annual trimming events.
5. The portion of property in Exhibit C shall be placed under a Conservation Easement granted to Lee County.
6. The nuisance plant moon vine (*Ipomoea sp.*) shall be killed in place by an appropriate herbicide in the portion of the subject property described in Exhibit C.

Boardwalk and Observation Deck

The boardwalk and observation deck work shall be conducted as required by FDEP Environmental Resource Permit No. 36-0152741-002-ES06 and U.S. Army Corps of Engineers (USACOE) Permit No. 199903085(LP-MS).

The alignment of the boardwalk and observation deck was field located with the help of the FDEP staff and is along the west property line where an existing ditch and berm exists (Exhibit D). Minimal mangrove pruning will be required to construct this feature.

Rip Rap Shoreline Stabilization

A rip rap revetment/breakwater system including red mangrove plantings shall be installed along the shoreline of the portion of the property described in Exhibit C to protect the shoreline from further erosion as shown on Exhibit F.

Monitoring

The trimming corridors shall be monitored annually for a period of ten (10) years from the date of initial trimming. Annual reports will be submitted to Lee County Environmental Sciences and analyze tree health, canopy coverage, plant species present, and wildlife observed.

Offsite Mitigation

To further compensate for any minimal impacts to mangroves as a result of the proposed trimming, an 11 acre parcel consisting of pristine mangroves shall be purchased and deeded to Lee County or the State of Florida. This 11 acre parcel is located in Section 27, Township 45S, Range 23E in Lee County. It is bordered to the north and east by the Caloosahatchee River and to the south by the Shell Point Village Canal. It is bordered to the west by mangrove wetlands. Please see Exhibit G which is an environmental assessment of the parcel.

EXHIBIT A

EXISTING CONDITIONS MAP

Existing Conditions Map

SECTION: 30
TOWNSHIP: 45 S
RANGE: 24 E

0 50 100
SCALE FEET

M.H.W.

PROPERTY LINE

A

B

C

DETENTION
BERM

SWALE

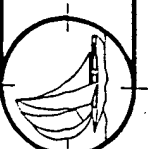
PROPERTY LINE

ZONE DESCRIPTION

- A** RED MANGROVE FRINGE W/ SCATTERED BLACK MANGROVES
5% OF TREES 45'-50' NGVD
40% OF TREES 32'-45' NGVD
55% OF TREES <32' NGVD
- B** BLACK MANGROVES W/ SCATTERED WHITE & RED MANGROVES
10% OF TREES 40'-50' NGVD
40% OF TREES 32'-40' NGVD
50% OF TREES <32' NGVD
- C** WHITE MANGROVES W/ SCATTERED BLACK MANGROVES
20% OF TREES 40'-50' NGVD
50% OF TREES 32'-40' NGVD
30% OF TREES <32' NGVD

April 24, 2002 10:24:43 a.m.
Drawing: GROSSRESPLN.DWG (DCS)

W. DEXTER BENDER
AND ASSOCIATES
2052 VIRGINIA AVENUE
FORT MYERS, FL 33901 (941) 334-3680



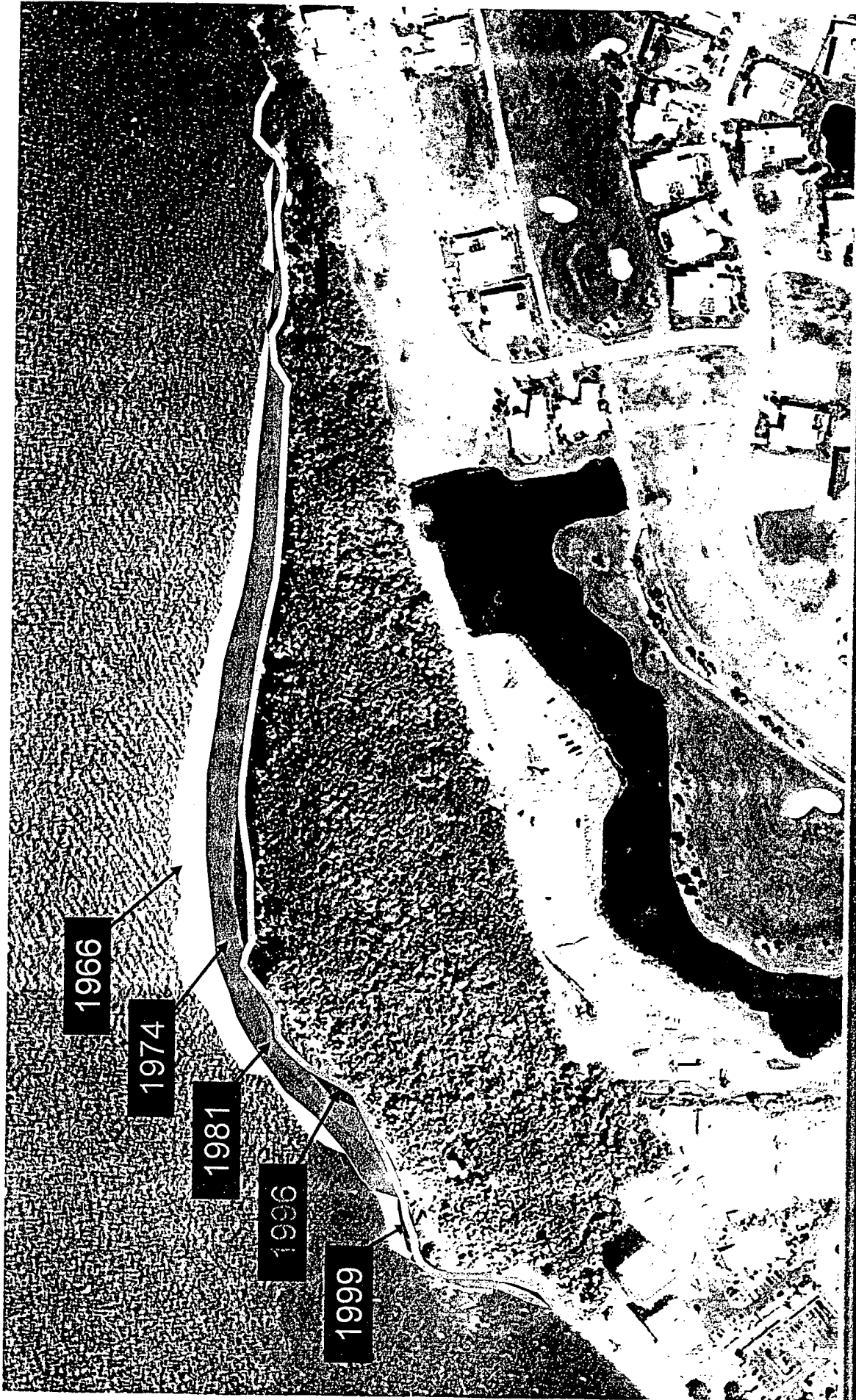
REVISED:

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SHEET

EXHIBIT B

SHORELINE LOSS MAP



Historical Shoreline From 1966 to 2002

PAIMAS DEL SOL

EXHIBIT C

SKETCH AND LEGAL DESCRIPTION OF MANGROVE AREA

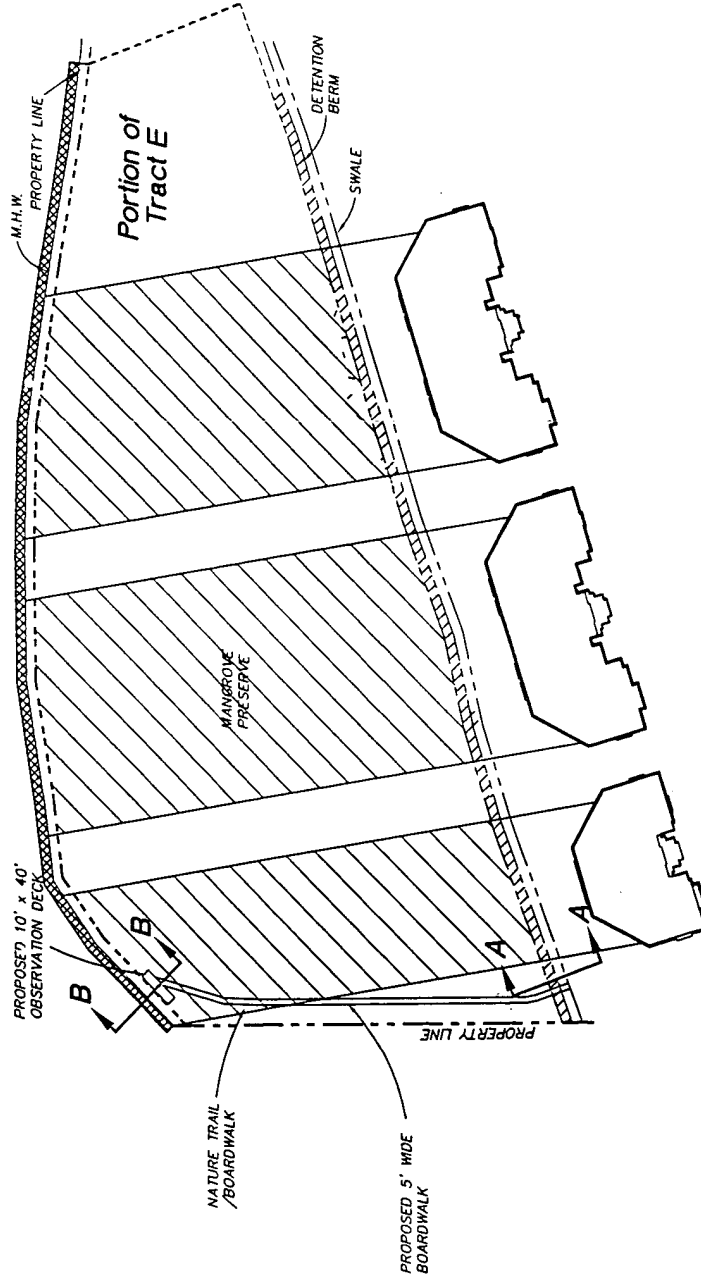
EXHIBIT D

BOARDWALK AND OBSERVATION DECK/MANGROVE TRIMMING PLAN

SECTION: 30
TOWNSHIP: 45 S
RANGE: 24 E

Boardwalk and Observation Deck/Mangrove Trimming Plan

Caloosahatchee River



-  Proposed Mangrove Trimming Area
-  Trim Trees to 32' NGVD (30'± from substrate)
-  Proposed Riprap Shoreline Protection

PERMIT USE ONLY,
NOT FOR CONSTRUCTION

June 26, 2002 9:10:37 a.m.
Drawing: GROSS/NOTICE.DWG (DCS)

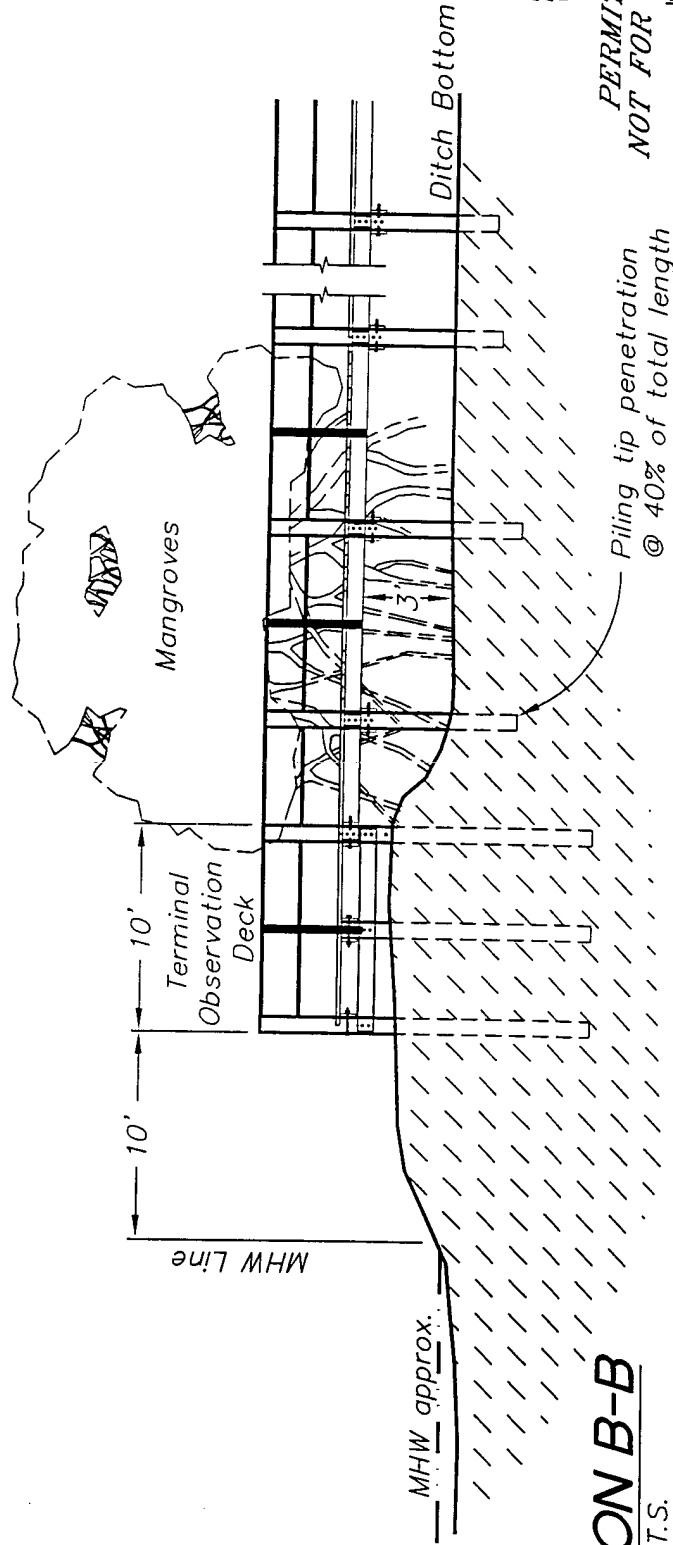
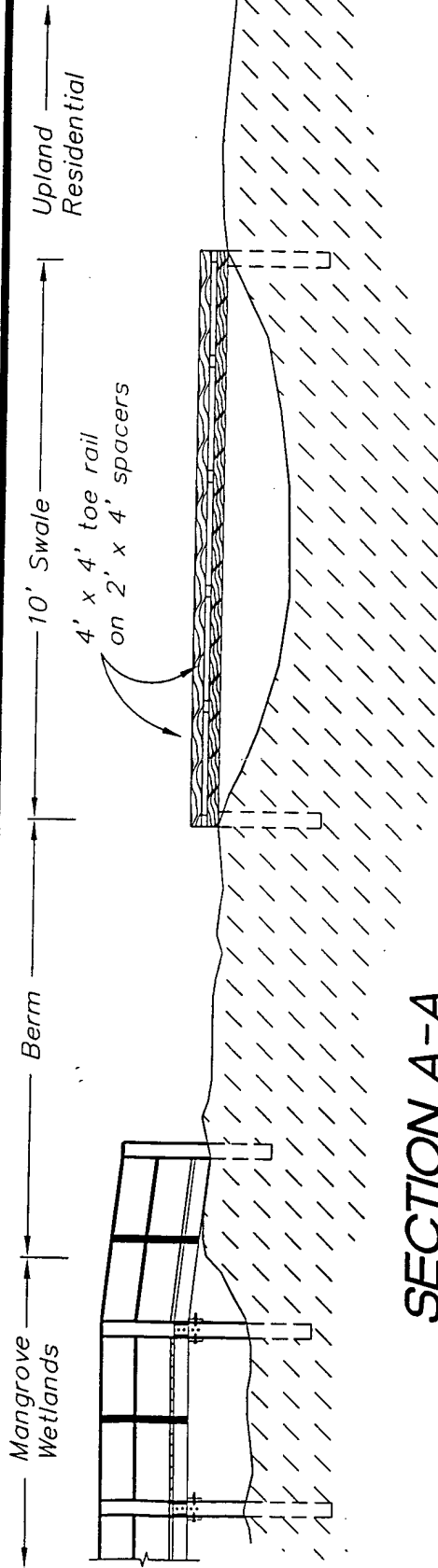


W. DEXTER BENDER
AND ASSOCIATES
ENVIRONMENTAL & MARINE CONSULTING
FORT MYERS, FL (941) 334-3680

REVISED:

Palmas Del Sol

SHEET



HANS J.M. WILSON
REGISTERED PROFESSIONAL ENGINEER
FLORIDA REGISTRATION NO. 39680
W. DEXTER BENDER & ASSOC., INC.

PERMIT USE ONLY,
NOT FOR CONSTRUCTION

June 19, 2002 11:25:45 a.m.
Drawing: GROSSIXSA.DWG (DCS)

PALMAS del SOL BOARDWALK and OBSERVATION DECK

SHEET

W. DEXTER BENDER
AND ASSOCIATES
2052 VIRGINIA AVENUE
FORT MYERS, FL 33901 (813) 334-3680

REVISED:

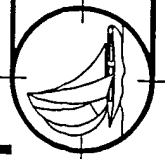


EXHIBIT E

FDEP PERMIT FILE NO. 36-0152741-003



Jeb Bush
Governor

Department of Environmental Protection

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Struhs
Secretary

August 13, 2001

Grosse Point Development
c/o Paul Owens
W. Dexter Bender & Associates, Inc.
2025 Virginia Ave.
Fort Myers Florida 33901

RECEIVED
W. DEX BENDER

AUG 14 2001

RE: Lee County - ERP
File No. 36-0152741-003

Dear Mr. Owens:

This letter is in response to your application File No. 36-0152741-003, received on April 3, 2001 to trim existing mangroves within a mangrove preserve in three sections (240 ft., 244 ft., and 152 ft.) from 40' NGVD to 32' NGVD (28 ft.) from the substrate.

The Department has reviewed the submitted information and determined the project is consistent with the stipulations of the Mangrove Trimming and Preservation Act (copy enclosed) as a General Permit.

Under Section 403.9327(1)(a) Florida Statutes (F.S.), the proposed activity meets the conditions for trimming mangroves for riparian owners and is subject to the following conditions:

1. No trimming of any kind may be conducted within the mangrove preserve until the Development of Regional Impact (DRI) # 12-8182-2, River's Edge Yacht and Country Club, has been modified and the restriction on vegetation trimming from within the mangrove preserve has been removed. **A copy of the modified DRI must be provided to the Department 10 days prior to the trimming being conducted.**
2. The trimming is supervised or conducted exclusively by a professional mangrove trimmer;
3. The trimming is conducted in an area where the department has not delegated the authority to regulate mangroves to a local government;

"More Protection, Less Process"

Printed on recycled paper.

4. No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove;
5. The mangroves subject to trimming under the permit do not extend more than 500 feet waterward as measured from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline;
6. No more than 65 percent of the mangroves along the shoreline which exceed 6 feet in pretrimmed height as measured from the substrate will be trimmed, and no mangrove will be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate;
7. A general permit may be used only once on any parcel of property to achieve a mangrove height of no less than 6 feet;
8. Trimming must be conducted in stages so that no more than 25 percent of the foliage is removed annually; and the height and configuration of the mangroves trimmed under these general permits may be maintained under s. 403.9326(1)(d);
9. Notice of intent to use a general permit must be made in writing to the department and must contain sufficient information to enable the department to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.

The trimming activities proposed are not expected to defoliate, remove, or destroy mangroves.

All activities performed under this General Permit are subject to the general conditions required in Section 62-341.215, Florida Administrative Code (F.A.C.), (attached).

Any changes made in the construction plans or location of the project may necessitate a permit modification or certification from the Department. Therefore, you are advised to contact the Department before beginning the project and before beginning any work in waters or wetlands which is not specifically described in your submittal.

The Applicant and persons whose substantial interests are affected by the Department's permitting decision (action) may petition for an administrative proceeding (hearing) in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the

Office of the General Counsel, Mail Station 35
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000.

within fourteen (14) days from the date of receipt of this notice. A Petitioner must mail a copy of the petition to the Applicant at the address indicated above, at the time of filing. The failure of any person to file a petition (or a request for mediation, as discussed below) within the allowed time frame shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-5.207, F.A.C.

The petition must contain the following information:

- (a) The name, address, and telephone number of each Petitioner, the Applicant's name and address, the Department Application File Number and the county in which the project is proposed;
- (b) A statement of how and when each Petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each Petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by Petitioner, if any;
- (e) A statement of facts which Petitioner contends warrant reversal or modification of the Department's action or proposed action;
- (f) A statement identifying the rules or statutes that the Petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by Petitioner, stating precisely the action Petitioner wants the Department to take with respect to the Department's action or proposed action addressed in this notice.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Any person may elect to pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Applicant, the Department, and any person who has filed a timely and sufficient petition for hearing) and by showing how the substantial interests of each mediating party are affected by the Department's action or proposed action. The agreement must

be filed (received) in the Office of General Counsel at the above address of the Department by the same deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been selected;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement;
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, F.S., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty (60) days from the date of execution of the agreement.

If mediation results in a settlement of the administrative dispute, the Department must enter a Final Order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for an administrative hearing only in accordance with the requirements for such petitions by the same deadline as set forth above for the filing of a petition.

If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, F.S., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the Department's action and electing remedies under those two sections.

This notice constitutes final agency action unless a petition or a request for mediation is filed in accordance with the above paragraphs, or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 62-103.070, F.A.C. Upon timely filing of a petition, a request for mediation, or a request for an extension of time this notice will not be effective until further Order of the Department.

When the Order is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, Mail Station 35, at 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Order is filed with the clerk of the Department.

This notice does not relieve you from the responsibility of obtaining other permits (federal, state or local) which may be required for this project. **If you have any questions concerning this matter, please contact Pamela Ammon of the South District office at the letterhead address or by telephone at (941) 332-6975.**

Sincerely,



Pamela Ammon
Environmental Specialist II
Submerged Lands and
Environmental Resource Program

Pa/pa

Enclosures:

Site Plan

General Conditions

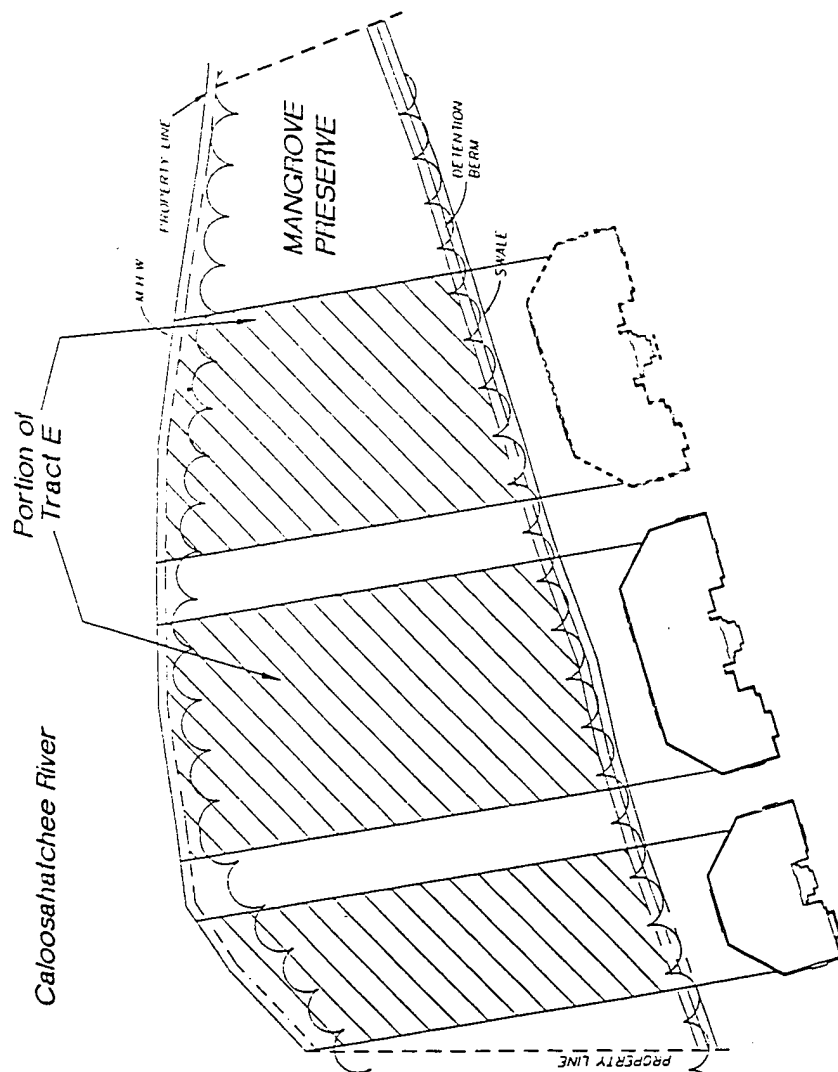
1996 Mangrove Trimming and Preservation Act

Copies to:

Kim Trebatowski, Lee County

Mangrove Trimming and Mitigation Plan

SECTION: 30
TOWNSHIP: 45 S
RANGE: 24 E



Proposed Mangrove Trimming Area
Trim Trees to 32' NGVD (28' from substrate)



0 100 200
SCALE FEET

RECEIVED

AUG 07 2001

D.E.P. - South District

PERMIT USE ONLY.
NOT FOR CONSTRUCTION

August 02, 2001 8:53:54 a.m.
Drawing: GROSSMAN.DWG (DGS)

Palmas Del Sol

W. DEXTER BENDER
AND ASSOCIATES
ENVIRONMENTAL & MARINE CONSULTING
FORT MYERS, FL (941) 334-3680

REVISED:

SHEET



EXHIBIT F

RIPRAP DETAIL AND CROSS SECTION

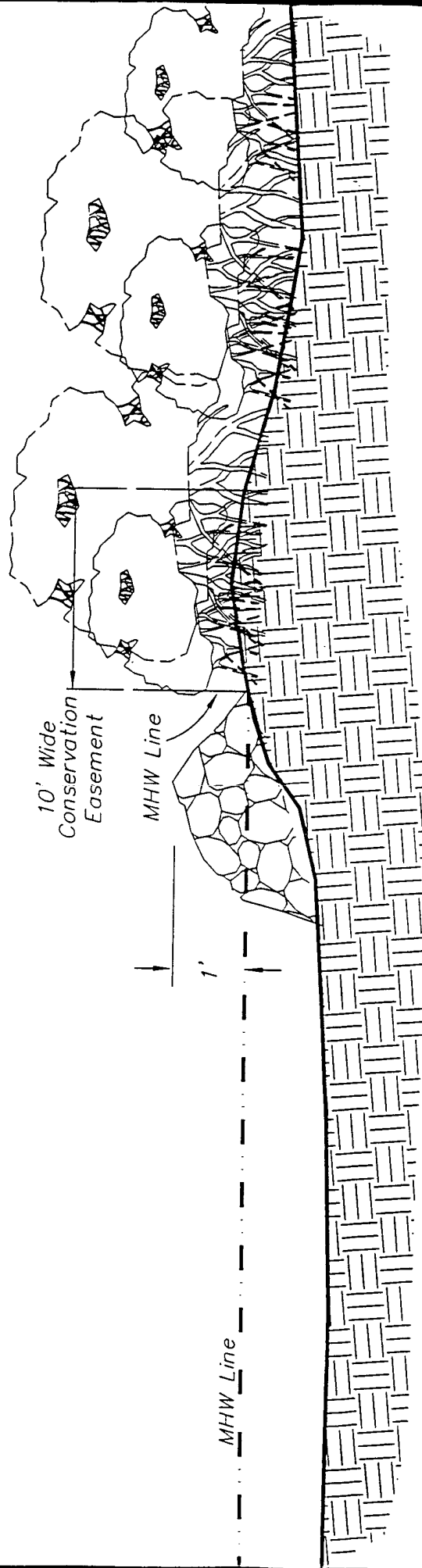
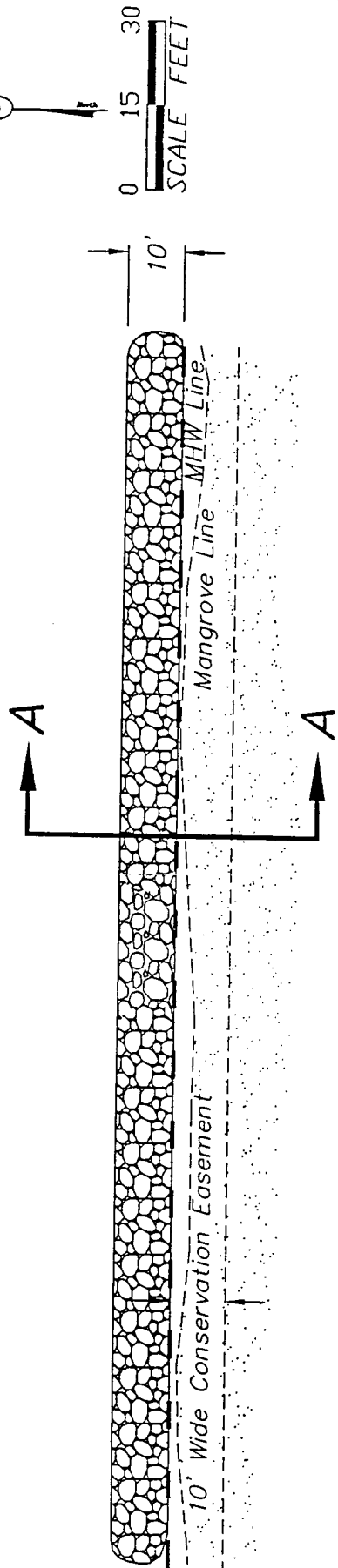
SECTION: 30
TOWNSHIP: 45 S
RANGE: 24 E

Rip Rap Detail and Cross-section

Caloosahatchee River



Proposed Riprap Sill



Section A-A

Not to Scale

PERMIT USE ONLY,
NOT FOR CONSTRUCTION

July 10, 2001 9:05:28 a.m.
Drawing: CROSSIDET.DWG (DCS)



W. DEXTER BENDER
AND ASSOCIATES
ENVIRONMENTAL & MARINE CONSULTING
FORT MYERS, FL (941) 334-3680

REVISED:

Palmas Del Sol

SHEET

EXHIBIT G

OFFSITE MITIGATION - SHELL POINT 11 ACRE PARCEL ENVIRONMENTAL ASSESSMENT

SITE ASSESSMENT

Shell Point Parcel

INTRODUCTION

W. Dexter Bender & Associates, Inc. has conducted an on site investigation of the "Shell Point" parcel and offer the following comments regarding biological features. These comments are based on field mapping and soil map research. The acreage discussed in this report is approximate and based upon aerial photographs, the 1999 Lee County Plat Book and the information provided to this office.

PHYSICAL CHARACTERISTICS

This parcel of land consists of approximately 11 acres located on Section 27, Township 45 South, Range 23 East in Lee County. This parcel is bordered to the north and east by the Caloosahatchee River and to the south by the Shell Point Village Canal. It is bordered to the west by forested mangrove wetlands.

VEGETATION

The site inspection revealed the presence of one type of vegetation association as described by the Florida Land Use Cover Classification System (FLUCCS). The parcel consists of mature forested mangrove wetlands, FLUCCS 612. There were no jurisdictional uplands observed on the parcel.

This parcel is vegetated by mature red mangroves which dominate the entire shoreline along the canal and river front. The interior of the parcel consists of a mature black mangrove forest that was inundated by 2"-4" of standing water during the time of the survey.

SOILS

As shown in the Lee County Soil Survey prepared by the USDA Soil Conservation Service (SCS), the subject property contains one major soil type:

SCS # 23 - Wulfert Muck

SCS #23, Wulfert Muck, is considered a "hydric" soil by the Hydric Soils of Florida Handbook of Florida. A hydric soil is defined as a soil that, in its natural condition, is saturated, ponded, or flooded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic (wetland) vegetation.

LOCATION MAP

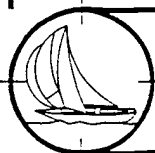
NOT TO SCALE

*Caloosahatchee
River*

*Subject
Property*

*PERMIT USE ONLY,
NOT FOR CONSTRUCTION*

May 31, 2002 2:01:29 p.m.
Drawing: GROSS1AREAMAP.DWG (DCS)



W. DEXTER BENDER
AND ASSOCIATES
ENVIRONMENTAL & MARINE CONSULTING
FORT MYERS, FL (941) 334-3680

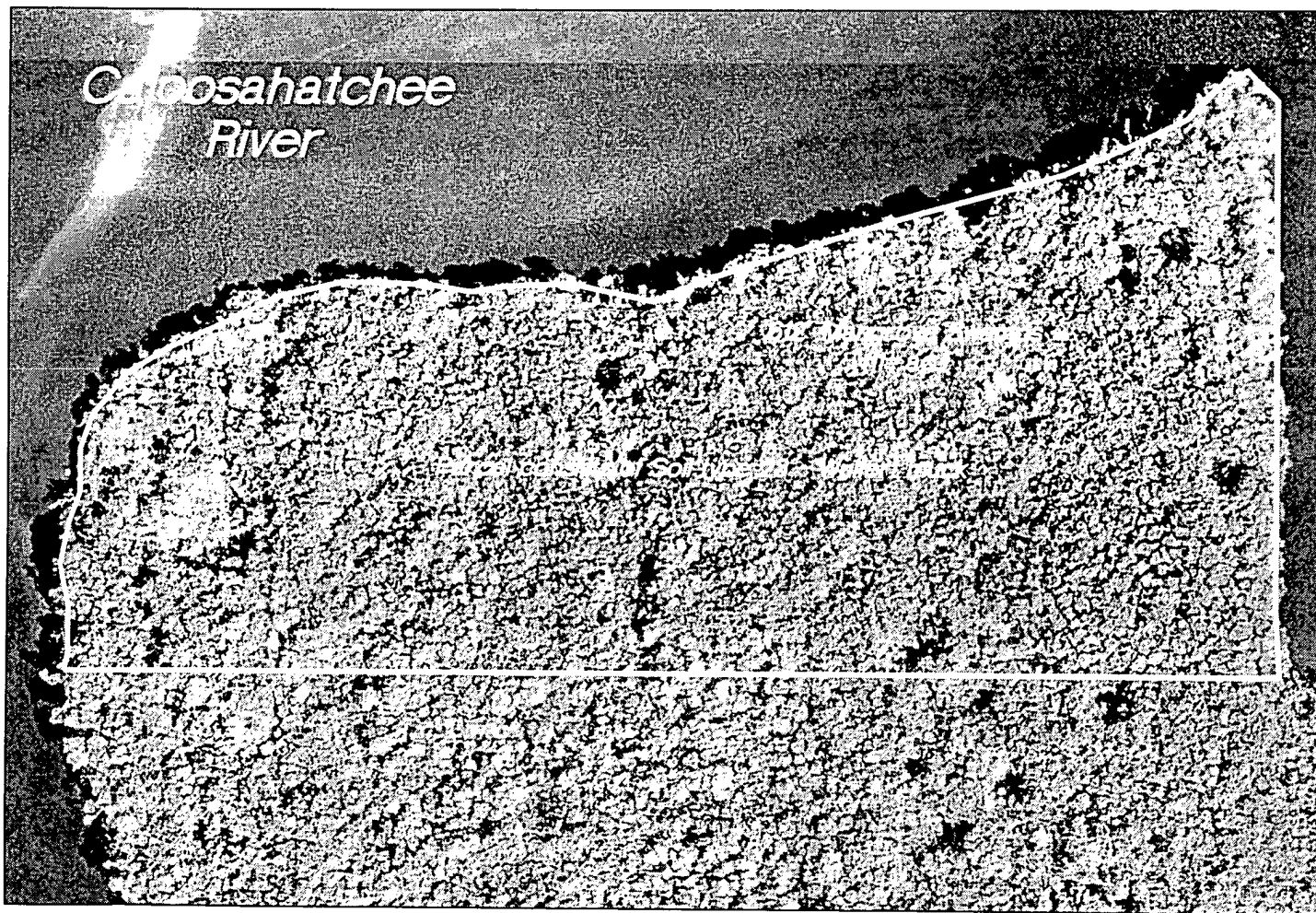
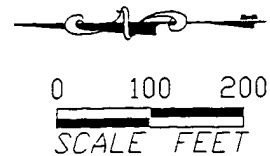
REVISED:

*Shell Point
Parcel*

SHEET

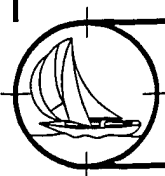
SECTION: 27
TOWNSHIP: 45 S
RANGE: 23 E

Vegetation and Soils Map



*PERMIT USE ONLY,
NOT FOR CONSTRUCTION*

May 30, 2002 8:51:22 a.m.
Drawing: GROSS1SPPLAN.DWG (DCS)



**W. DEXTER BENDER
AND ASSOCIATES**
ENVIRONMENTAL & MARINE CONSULTING
FORT MYERS, FL (941) 334-3680

REVISED:

**Shell Point
Parcel**

SHEET

References

- Estevez, Ernest D. and Evans, Rhonda K. 1978. *The Effects of Pruning on Reproduction by the Red Mangrove, Rhizophora mangle*. Proceedings of the Fifth Annual Conference of Restoration of Coastal Vegetation in Florida, May 13, 1978.
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- Snedaker, Samuel C., Brown, Melvin S., Lahmann, Enrique J., and Araujo, Raphael J. 1992. *Journal of Coast Research*, Vol. 8, No. 4, pages 919-925.
- Stevely, John and Rabinowitz, Larry. 1982. *Mangroves - A Guide for Planting and Maintenance*. Florida Sea Grant Project #A/Map-1.



MORRIS-DEPEW ASSOCIATES, INC.
ENGINEERS • PLANNERS • SURVEYORS & MAPPERS
2216 Altamont Avenue • Fort Myers, Florida 33901 • (941) 337-3993 • FAX (941) 337-3994

**APPLICANT'S PUBLIC HEARING ANALYSIS:
PALMAS DEL SOL/GULF HARBOUR
NOTICE OF PROPOSED CHANGE
HEARING DATE: JULY 24, 2002**

Prepared By: David W. Depew, AICP
Morris-Depew Associates, Inc.
2216 Altamonte Avenue
Ft. Myers, FL 33901
July 22, 2002

APPLICANT'S EXHIBIT

#9
DRL 2001-00005



**APPLICANT'S PUBLIC HEARING ANALYSIS:
PALMAS DEL SOL
JULY 22, 2002
HEARING DATE: JULY 24, 2002**

Introduction

This report will analyze the request for an amendment to an existing Development of Regional Impact development order (DRI/DO) submitted as a Notice of Proposed Change (NOPC) for a portion of the Gulf Harbour DRI known as Palmas del Sol. I will provide a brief overview of the project and relevant factors discussed later in the report. It is the purpose of this report to determine whether the proposed DRI amendment is consistent with applicable regulations and generally accepted zoning and planning principles, whether there is sufficient evidence to support the requested DRI amendment, whether it is reasonable, and to examine its relationship to the public health, safety, and general welfare. In preparing this report, I examined local land use decisions and recommendations, the Lee County Comprehensive Plan (called the 'Lee Plan'), the Lee County Land Development Code (LDC), and the various documents submitted on behalf of the Gulf Harbour/Palmas del Sol NOPC. These are explained in greater detail below. I also applied generally accepted planning principles, knowledge of which was acquired through prior education and experience, as explained in my professional resume, submitted with this report. To the extent that this report states facts that are not derived from one of these aforementioned documents or other documents identified in the report, they are based upon my personal knowledge acquired through a study of the



area and my professional experience as set forth in my resume. This request has raised issues relating to Lee Plan consistency; this report will provide examples of approved standards of consistency established locally in similar situations and demonstrate that the request itself is consistent with all applicable Lee Plan policies and LDC requirements.

Background

The applicant is proposing an amendment to the Gulf Harbour DRI/DO to allow a boardwalk and selected trimming of mangroves in the area directly north of the Palmas del Sol multi-family development located on the northwest corner of the Gulf Harbour development. The parent tract is 547.6 acre property that is developed with a mix of uses including a golf course, a marina and related facilities, single and multi-family family residential units, and infrastructure. The parent tract is located on the north side of McGregor Boulevard (15065 McGregor Blvd.) in Section 30, Township 45 South, Range 24 East, and is located in the Suburban land use category of the Lee Plan Future Land Use Map (FLUM). Access to the site is from Compass Point Drive, and McGregor Boulevard. An existing development is located on the parcel, and similar residential developments, with accessory uses, are located on the adjoining parcels to the east, west and south. Across McGregor Blvd. is a retail area consisting of a number of strip commercial uses.

The parcel comprising this application has been previously approved as a mixed-use residential development, and has an existing DRI development



order (#12-8182-21) in place. The purpose of the proposed amendment is to permit selective trimming of mangroves in Tract E and allow construction of a boardwalk and viewing area along the shoreline of the Caloosahatchee.

The Lee Plan

The subject property is located in the Suburban land use designation of the Lee Plan's Future Land Use Map. The Plan describes the Suburban designation in Policy 1.1.5 that states, "*The Suburban areas are or will be predominantly residential areas that are either on the fringe of the Central Urban or Urban Community areas or in areas where it is appropriate to protect existing or emerging residential neighborhoods. These areas provide housing near the more urban areas but do not provide the full mix of land uses typical of urban areas. The standard residential densities are the same as the Urban Community category. Higher densities, commercial development greater than neighborhood centers, and industrial land uses are not permitted. Bonus densities are not allowed.*" A review of the permitted uses from the proposed Schedule of Uses on the MCP indicates that the proposal for this request is consistent with the purpose and intent of the Suburban category as described above. The principal uses included within this development are residential in nature, along with normal accessory activities, and meet the overall density for the land use designation. This use has been deemed consistent by Staff, in this request and in prior DRI/DO amendments, and is similar to the existing uses adjoining the subject property.



Policy 4.1.1 of the Lee Plan states, “*Development designs shall be evaluated to ensure that land uses and structures are well integrated, properly oriented, and functionally related to the topographic and natural features of the site, and that the placement of uses or structures within the development minimizes the expansion and construction of street and utility improvements.*” The proposed development order amendment will attempt to preserve wetlands that are currently endangered due to continuing erosion along the Caloosahatchee. Exotic and invasive vegetation will be removed on a continuing basis, and an incentive for the ongoing preservation of the health of the mangrove areas will be established through the continuing awareness of the functionality of the wetlands on the part of the owners. The proposed trimming plan has been designed to preserve the health of the mangrove forest through selective trimming over a period of 4-5 years. This will permit additional mid-story growth that will serve to strengthen and maintain the health of the overall system. These design parameters combine to implement the elements found in Policy 4.1.1.

Lee Plan Policy 5.1.7 states, that Lee County shall, “*Maintain development regulations that require that community facilities (such as park, recreational, and open space areas) in residential developments are functionally related to all dwelling units and easily accessible via pedestrian and bicycle pathways. These pathways shall be interconnected with adjoining developments and public pathways whenever possible. Townhouses, condominiums, apartments, and other types of multi-family residential development shall have directly accessible common open space.*”

It is noted that the Policy is further implemented by the proposal in that it provides for directly accessible open space in the form of the proposed pedestrian walkway and observation platform. The proposed boardwalk and platform are part of the community facilities and open space area for the existing residential development and as such are part of the overall implementation of the Lee Plan policies as applied to the project.

Lee County has articulated, in Goal 74, the commitment, *"To protect the natural resources of the coastal planning area from damage caused by inappropriate development."* Additionally, Objective 74.1 states, *"Within the coastal planning area, the county shall 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 84) and Rare and Unique upland habitats. Rare and Unique upland habitats include, but are not limited to: sand scrub (320); coastal scrub (322); those pine flatwoods (411) which can be categorized as "mature" due to the absence of severe impacts caused by logging, drainage, and exotic infestation; slash pine/midstory oak (412); tropical hardwood (426); live oak hammock (427); and cabbage palm hammock (428). The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS) Level III (FDOT, 1985). (See also Policy 83.1.4.) The digitization of the 1989 baseline coastal vegetation mapping (including wetlands and rare and unique uplands, as defined above) shall be completed by 1996."* In the current situation, there is documented erosion occurring along the Caloosahatchee shoreline north of the residential

development. Historical records indicate the increasing erosion in this area of the River due, apparently in part, to an increase in wave action from vessels in the intercoastal waterway channel. Given the continuing erosion problem, the trade-off of selective mangrove trimming for shoreline stabilization efforts implements Goal 74 and Objective 74.1 of the Lee Plan. The addition of an 11 acre mangrove preservation area to be dedicated to Lee County only serves to further implement this Policy.

Likewise, Goal 77 calls for Lee County, *"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."* To that end, Objective 77.1 states, *"The county shall continue to implement a resource management program that ensures 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."* The provisions for shoreline stabilization and replanting of mangroves along the active riverbank serve to provide long-term protection and enhancement of the existing natural wetland habitat. These actions will provide for the long-term functionality of the mangrove system, maintaining the hydroecological balance. The trimming of the mangroves for the view corridors will not affect either the immediate health or the long term viability of the system, and will even provide additional mid-story growth for the affected vegetation. The conditions under which such trimming will

occur will guarantee the survivability of the vegetation affected, and provide a functional relationship between the existing, developed uplands and the wetland system. The donation of an 11 acre tract adjacent to Shell Point Village has also become part of the overall mitigation effort, and further serves to implement the Lee Plan's Goals, Objectives, and Policies related to preservation and enhancement of salt water wetland systems.

The effect of the planned efforts will serve to protect the mangrove system adjacent to the project by establishing it as part of the overall aesthetic of the Palmas del Sol project. This effort will help implement Policy 77.2.4 which states, "*Encourage the protection of viable tracts of sensitive or high-quality natural plant communities within developments.*" Further, by establishing a long-term management plan for the wetland area, the County serves to establish a program that will preserve native plant species while controlling the intrusion of exotic species. This effort serves to implement Policy 77.2.9 that states Lee County shall, "*Maintain regulations, incentives, and programs for preserving and planting native plant species and for controlling invasive exotic plants, particularly within environmentally sensitive areas.*" Additionally, the 11 acres of preservation area to be donated to Lee County will serve to implement these policies.

It is also noted that Lee Plan Policy 77.2.10 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.” Approval of the DRI/DO will apply directly to the Palmas del Sol project, located adjacent to an aquatic recreation area, serving to protect the natural character and public benefit of the preserve area by establishing shoreline protection that will preserve the value of this area for future generations. This policy is directly on point for the current application, and is one that is clearly implemented by the requested approval.

Policy 77.4.4 states that the County shall, “*Restrict the use of protected plant and wildlife species habitat to that which is compatible with the requirements of endangered and threatened species and species of special concern. New developments shall protect remnants of viable habitats when listed vegetative and wildlife species inhabit a tract slated for development, except where equivalent mitigation is provided.*” This policy does not indicate that use of protected plant and wildlife species habitat is prohibited, but rather that it is restricted to uses that are compatible with species inhabiting the area in question. The scientific studies presented as part of the submission clearly demonstrate that the proposed activities are indeed compatible with the existing species of the area in question, and that the establishment of the shoreline protection will serve to protect the habitat in question on a long-term basis.

The protection of the shoreline as proposed in the NOPC will serve to maintain and enhance the biological productivity of the wetland area in question. The trimming plan details will serve to allow for the establishment of the viewing corridors while maintaining the long-term viability of the

area. The plans for the boardwalk and observation platform have been prepared with careful consideration of the minimization of impacts to the mangrove system along which the path and platform are located. Finally, the 11 acres of mangrove wetlands to be dedicated to the County will ensure that additional long-term preservation of pristine salt-water wetlands will be undertaken as part of the development approval for this project. Together these actions will serve to implement Lee Plan Policy 78.1.2 which states, *“Development affecting coastal and estuarine water resources shall maintain or enhance the biological and economic productivity of these resources.”* Further, the dedication of lands along with the establishment of the shoreline protection along the river frontage serves to implement Policy 83.1.2 which states, *“All development within the coastal planning area shall be compatible with protection of natural systems.”*

Lee Plan Policy 84.1.1 states, *“Development in wetlands shall be limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this plan, and except that owners of wetlands adjacent to Intensive Development, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnotes 9b and 9c of Table 1(a), Summary of Residential Densities.”* The only development proposed to take place within the wetlands area

involves uses of a recreational and open space type of activity. There are no residential units permitted or proposed for the wetland area. Further the shoreline stabilization program involves a conservation use for the wetland area, and as such will further implement this policy.

Although Policy 84.1.2 notes that the County will not undertake an independent review of wetlands impacts resulting from development, it is clear that the County is indeed concerned regarding the impact of the proposed selective trimming of the mangroves in this area. It is noted that the State and Federal agencies have undertaken a review of the proposed trimming permits as well as an independent review by experts hired by the property owner. All scientific literature and all empirical data suggest that the details of the trimming plan will serve to preserve the wetland area in question. Further the elimination of the shoreline erosion will work to preserve and enhance the mangrove area in a fashion that will restrict the adverse impacts that have been occurring on the very active shoreline.

The prevention of erosion is a concept embraced by the Lee Plan in areas such as the subject property. Policy 95.1.1 states, *"The establishment of vegetated buffer zones along Lee County waterways to prevent erosion of natural shorelines, establish additional wetlands habitat, and enhance the scenery shall be preferred to the indiscriminate clearing of vegetation. These buffer zones shall be evaluated in the review of planned developments and developments of regional impact, and also by specific county regulations."* The County has recognized in the past that protection of the shoreline is

important to the ongoing health and productivity of mangrove areas along the Caloosahatchee. The proposal in this case serves to implement that policy while the selective trimming of mangroves will preserve the scenery yet allow for human interaction with the aesthetic elements of the environment.

Lee County Land Development Code

Lee County Development Code (LDC) section 34-411 sets forth certain criteria, applicable to planned developments, necessary to gain approval of a request. Section 34-411(f) states, "*Development and subsequent use of the planned development shall not create or increase hazards to persons or property, whether on or off the site, by increasing the probability or degree of flood, erosion or other danger, nor shall it impose a nuisance on surrounding land uses or the public's interest generally through emissions of noise, glare, dust, odor, air or water pollutants.*" The proposal significantly decreases the possibility of erosion along the river frontage, and as such conforms to this design standard proposed for planned developments.

Section 34-411(g) of the LDC states, "*Every effort shall be made in the planning, design and execution of a planned development to protect, preserve or to not unnecessarily destroy or alter natural, historic or archaeological features of the site, particularly mature native trees and other threatened or endangered native vegetation. Alteration of the vegetation or topography that unnecessarily disrupts the surface water or groundwater hydrology, increases erosion of the land, or destroys significant wildlife habitat is prohibited. That*



habitat is significant that is critical for the survival of rare, threatened or endangered species of flora or fauna.” The proposed development, and accompanying land dedication, will serve to preserve the native vegetation, eliminate exotic intrusion, preserve the existing shoreline, and, as a result of this preservation, maintain the natural habitat. The trimming program will also be undertaken in a fashion designed to preserve the mangroves and the environmental values of the wetland area.

It is also noted that 34-411(h) states, “*A fundamental principle of planned development design is the creative use of the open space requirement to produce an architecturally integrated human environment. This shall be coordinated with the achievement of other goals, e.g., the preservation or conservation of environmentally sensitive land and waters or archaeological sites.*” Clearly the proposal works to produce an integrated human environment while preserving the natural features of the site. The proposal represents a balance of long-term preservation with enhancement of the aesthetic features of the area.

The request, as demonstrated above, conforms to the requirements found in this section of the LDC in that it protects the functional wetlands on the site, minimizes adverse impacts upon adjoining land uses and will comply with all applicable federal and state requirements. Further, the trimming and shoreline restoration plans reflect state of the art scientific data and techniques to preserve and enhance the natural values of the site. All necessary submittal documents and materials have been provided to the County for review, and all



technical elements of the LDC have been met with regard to the request.

Conditions

The Staff conditions appear to be, by and large, acceptable for the boardwalk and observation platform. Further, the recommendations and conditions for approval of the trimming request are founded upon the an unprecedented amount of scientific data prepared in accordance with the most rigorous standards by the independent professionals associated with the project. The proposed trimming plan adopts state of the art methods and monitoring programs to assure that a gradual reduction in the height of the mangroves along the view corridors will be done in a sensitive and responsible fashion. The wetland dedication program along with the establishment of the shoreline restoration and protection program clearly offsets any effects of the trimming program, and the Federal and State agencies reviewing the proposal have supported this approach. Indeed, the conditions proposed far exceed those imposed by other reviewing agencies, and the process to be implemented minimizes effects of the trimming in a fashion heretofore not mandated by any reviewing agency.

Conclusion

It is my conclusion, based upon the foregoing analysis, that the proposed request is consistent with the applicable Lee Plan Goals, Objectives, and Policies, the LDC, and all other applicable ordinances, codes, and policies. This request modifies a use for the property consistent with all applicable rules and regulations, and decreases the overall impacts of future



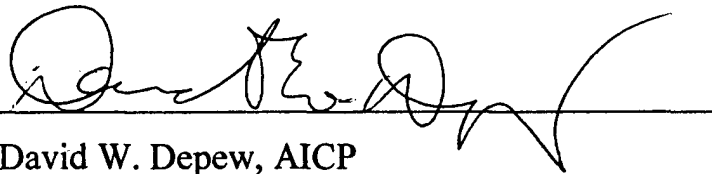
development by protection of vital natural resources. The request is compatible with surrounding development, and utilization of the parcel as proposed will ensure that the site will remain a healthy and active mangrove forest.

In terms of the LDC, it is my conclusion that:

1. The applicant has proven entitlement to the amendment by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested amendment, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.



5. The proposed use or mix of uses is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

A handwritten signature in black ink, appearing to read "David W. Depew", is written over a horizontal line.

David W. Depew, AICP

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-380.285)

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landowners' rights.
aw relating to permits, andprocedures; remedies.
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, 380.06, 380.07, and 380.08
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ch. 2001-62.

It is the legislative intent that
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means any person, including
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"order" means any order granting
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"it permit" includes any building
plat approval, or rezoning; cert
other action having the effect
ent as defined in this chapter.

(5) "Downtown development authority" means a local governmental agency established under part III of chapter 163 or created with similar powers and responsibilities by special act for the purpose of planning, coordinating, and assisting in the implementation, revitalization, and redevelopment of a specific downtown area of a city.

(6) "Governmental agency" means:

(a) The United States or any department, commission, agency, or other instrumentality thereof;

(b) This state or any department, commission, agency, or other instrumentality thereof;

(c) Any local government, as defined in this chapter; or any department, commission, agency, or other instrumentality thereof;

(d) Any school board or other special district, authority, or other governmental entity.

(7) "Land" means the earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

(8) "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land.

(9) "Land use" means the development that has occurred on land.

(10) "Local comprehensive plan" means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as amended.

(11) "Local government" means any county or municipality and, where relevant, any joint airport zoning board.

(12) "Major public facility" means any publicly owned facility of more than local significance.

(13) "Parcel of land" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

(14) "Person" means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(15) "Regional planning agency" means the agency designated by the state land planning agency to exercise responsibilities under this chapter in a particular region of the state.

(16) "Rule" means a rule adopted under chapter 120.

(17) "State land development plan" means a comprehensive statewide plan or any portion thereof setting forth state land development policies. Such plan shall not have any legal effect until enacted by general law or the Legislature confers express rulemaking authority on the state land planning agency to adopt such plan by rule for specific application.

(18) "State land planning agency" means the Department of Community Affairs and may be referred to in this part as the "department."

(19) "Structure" means anything constructed, installed, or portable, the use of which requires a loca-

tion on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

(20) "Resource planning and management committee" or "committee" means a committee appointed pursuant to s. 380.045.

History.—s. 3, ch. 72-317; s. 1, ch. 79-73; s. 1, ch. 80-313; s. 1, ch. 83-308; s. 41, ch. 85-55; s. 32, ch. 98-176.

380.032 State land planning agency; powers and duties.—The state land planning agency shall have the power and the duty to:

(1) Exercise general supervision of the administration and enforcement of this act and all rules and regulations promulgated hereunder.

(2)(a) Adopt or modify rules to carry out the intent and purposes of this act. Such rules shall be consistent with the provisions of this act.

(b) Within 20 days following adoption, any substantially affected party may initiate review of any rule adopted by the state land planning agency interpreting the guidelines and standards by filing a request for review with the Administration Commission and serving a copy on the state land planning agency. Filing a request for review shall stay the effectiveness of the rule pending a decision by the Administration Commission. Within 45 days following receipt of a request for review, the commission shall either reject the rule or approve the rule, with or without modification.

(3) Enter into agreements with any landowner, developer, or governmental agency as may be necessary to effectuate the provisions and purposes of this act or any rules promulgated hereunder.

History.—s. 1, ch. 77-215; s. 2, ch. 80-313; s. 42, ch. 85-55.

380.04 Definition of development.—

(1) The term "development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve "development," as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of subsection (1).

History.—s. 4, ch. 72-317; s. 2, ch. 83-308.

380.045 Resource planning and management committees; objectives; procedures.—

(1) Prior to recommending an area as an area of critical state concern pursuant to s. 380.05, the Governor, acting as the chief planning officer of the state, shall appoint a resource planning and management committee for the area under study by the state land planning agency. The objective of the committee shall be to organize a voluntary, cooperative resource planning and management program to resolve existing, and prevent future, problems which may endanger those resources, facilities, and areas described in s. 380.05(2) within the area under study by the state land planning agency.

(2) The committee shall include, but shall not be limited to, representation from each of the following: elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the

state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels is relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chair and vice chair. A staff member of the state land planning agency shall be appointed by the director of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chair or on the demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee shall, from the time of appointment, remain in existence for no less than 6 months.

(3) Not later than 12 months after its appointment by the Governor, the committee shall either adopt a proposed voluntary resource planning and management program for the area under study or recommend that a voluntary resource planning and management program not be adopted. The proposed voluntary resource planning and management program shall contain the committee findings with respect to problems that endanger those resources, facilities, and areas described in s. 380.05(2) and shall contain detailed recommendations for state, regional, and local governmental actions necessary to resolve current and prevent future problems identified by the committee. A major objective of the proposed voluntary resource planning and management program shall be the effective coordination of state, regional, and local planning; program implementation; and regulatory activities for comprehensive resource management. The committee shall submit the proposed voluntary resource planning and management program to the head of the state land planning agency, who shall transmit the program along with the recommendations of the agency for monitoring and enforcing the program, as well as any other recommendations deemed appropriate, to the Administration Commission.

(4) The Administration Commission shall by resolution approve, approve as modified, or reject the proposed voluntary resource planning and management program and state land planning agency recommendations; and the Administration Commission shall request each state or regional agency that is responsible for implementing a portion of an approved program to conduct its programs and regulatory activities in a manner consistent with the approved program. Each state and regional agency involved in implementing the program shall cooperate to the maximum extent possible in ensuring that the program is given full effect.

(5) The state land planning agency shall report to the Administration Commission within 12 months of the approval of the program by the commission concerning the implementation and the effects of the approved voluntary resource planning and management program. The report shall include, but shall not be limited to:

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(a) An as-
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agency plan
activities, and

(b) An as
affected local

(c) An evaluation and recommendations for improvement

(d) A record of any portion of the area of critical

The state law reports to the including records study area because area or in the resource plan History.—s. 2, c

380.05 A)

(1)(a) From time to time the Commission shall, upon the recommendation of the Commission on the Status of Women, within the biennial budgetary cycle, allocate funds to the agency for the purpose of the appointment of a representative who would represent the Commission on the Status of Women within the state, federal, and local government. The Commission shall not be required to submit a plan or report to the Commission on the Status of Women.

(b) With
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nation

PROFILE

EDUCATION

Bachelors of Science
Natural Resources
Cornell University
1990

**PROFESSIONAL
AFFILIATIONS**

Florida Association of
Environmental
Professionals

Ms. Grant is an environmental scientist currently employed with VanasseDaylor,LLP offering 11 years of professional experience in Florida. Over 7 years of her experience involved employment with the Department of Environmental Protection where her primary responsibilities included Environmental Resource Permitting (ERP), sovereign submerged lands authorizations, mangrove trimming and alteration permitting, wetland jurisdictional delineations, and water quality and wetland resource impact assessments. She also offers experience in performing listed species surveys, mapping vegetation/habitat communities, surface water quality sampling, and environmental compliance and enforcement issues.

PROFESSIONAL EXPERIENCE

**EXPERT WITNESS
TESTIMONY**

Environmental
Resource Permitting
and
Dredge and Fill
Permitting

VanasseDaylor, LLP, Fort Myers, FL

ENVIRONMENTAL SCIENTIST

8/01-Present

Obtain authorizations for development activities as they relate to local, State, and Federal permitting requirements. Project manager responsible for: preparation of Environmental Resource Permit and Federal Dredge and Fill Applications, Environmental Impact Statements, County Rezone Applications, and other applications as they relate to development approvals; assessing wetland impacts and designing wetland mitigation programs; performing habitat/vegetation mapping and protected species surveys; performing due diligence activities regarding environmental issues on projects; coordination with local, State, and Federal agencies to obtain development approvals.

WilsonMiller, Inc., Fort Myers, FL

PROJECT ECOLOGIST

4/00-8/01

Performed fieldwork and prepared application materials associated with development approvals. Duties included: habitat/vegetation mapping and protected species surveys; preparation of protected species reports and environmental applications as they relate to development approvals; assessment of wetland impacts and development of wetland mitigation programs; assisting in project land plan design; performance of due diligence activities; mitigation monitoring and reporting; and the capture and relocation of gopher tortoises.

Department of Environmental Protection, Fort Myers, FL

ENVIRONMENTAL SPECIALIST

7/92-4/00

Processed Environmental Resource Permits, Mangrove Trimming and Alteration Permits, and Sovereign Submerged Lands agency actions. Duties included: assessment of project related wetland and/or mangrove impacts; review and approval of mitigation programs; writing Environmental Resource Permits, Mangrove Alteration Permits, and Sovereign Submerged Lands agency actions; performing wetland delineations at sites; investigating wetland and mangrove alteration violations; and conducting water quality sampling.

Florida Marine Research Institute, Port Charlotte, FL

BIOLOGICAL SCIENTIST

5/91-7/92

Program biologist responsible for initiating the Fisheries Dependent Monitoring Program in southwest Florida. Duties included: collection biological data on fish caught by commercial fisherman; preparation of monthly reports; participation in the Fisheries Dependent Monitoring Program; collection of biological data on juvenile fish in SW Florida waters; operation of a 24-foot mullet skiff; setting gill nets and pulling trawls and seines for sample collection; conducting water quality sampling; and recording sample data.

Southern Biomes, EIS, Cape Coral, FL

BIOLOGIST

10/90-5/91

Biologist responsible for: fieldwork: wetland restoration activities; preparation of reports; and preparation of environmental application exhibits.

From: Dawn Lehnert
To: Grady, Beverly; Owen, Paul; Pavese, Michael; Trebatoski, Kim
Date: 7/24/02 8:50AM
Subject: Re: River's Edge DRI

The following language is proposed to replace the existing language found in DRI DO condition 5(d)(1)(e)(i)

The property described in Exhibit F must be conveyed to the Palmas Del Sol Condominium Association subject to covenants and restrictions with respect to maintenance and use consistent with the Fourth Amendment to the DRI DO.

>>> Kim Trebatoski 07/23/02 12:19PM >>>

Please see attached memo regarding condition 5(d)(1)(e)(i)

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

STAFF'S EXHIBIT

DRI #1-00005