

RESOLUTION NUMBER Z-07-056

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

WHEREAS, an application was filed by the property owner, GP INVESTMENTS, LLC., to rezone a 5.6+/- acre parcel from Community Commercial (CC) and Commercial Planned Development (CPD) to Commercial Planned Development (CPD) in reference to Devonwood Dealership CPD; and,

WHEREAS, a public hearing was advertised and held on October 11, 2007, before the Lee County Zoning Hearing Examiner, Richard A. Gescheidt, who gave full consideration to the evidence in the record for Case #DCI2007-00010; and

WHEREAS, a second public hearing was advertised and held on February 4, 2008, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone a 5.6+/- acre parcel from CC and CPD to CPD, to permit Vehicle and Equipment Sales with a maximum 25,000 s/f building, and 45,000 s/f of outdoor display area. The property is located in the Suburban Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. The development of this project must be substantially consistent with the two-page Master Concept Plan (MCP) entitled "Devondwood Car Dealership" date-stamped "Received MAY 07 2008 Community Development," attached as Exhibit C, except as modified by the conditions below

This development must comply with all requirements of the LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

Maximum Commercial Floor Area: 25,000 s/f of commercial floor area for the building; 5,000 s/f for service areas.

Maximum Area for Vehicle Sales and Display: 45,000 s/f

2. **USES AND SITE DEVELOPMENT REGULATIONS:**

The following limits apply to the project and uses:

A. **Schedule of Uses**

ACCESSORY USES AND STRUCTURES

ADMINISTRATIVE OFFICES

CAR WASH, ACCESSORY TO A VEHICLE DEALER ONLY.

WITHIN AN ENCLOSED FACILITY ONLY.

ESSENTIAL SERVICES

ESSENTIAL SERVICES - GROUP I ONLY

EXCAVATION: WATER RETENTION - NO BLASTING

FENCES AND WALLS

PARKING LOT, ACCESSORY AND TEMPORARY

SIGNS IN ACCORDANCE WITH CHAPTER 30,

INCLUDING AN EXISTING BILLBOARD.

VEHICLE & EQUIPMENT DEALER - GROUP I ONLY

AND RELATED ACCESSORY USES.

B. **Site Development Regulations**

Minimum Lot Size

Lot Width N/A

Lot Depth N/A

Lot Area N/A

Minimum Building Setbacks

US 41 50 feet

Lake Devonwood Drive 50 feet

Internal Roads 20 feet

Side 40 feet

Rear 40 feet

Water Body 25 feet

Maximum Building Height 2 stories/35 feet

Maximum Lot Coverage 45 percent

3. **NO BLASTING**

No development blasting is permitted as part of this project unless approved at a subsequent public hearing as an amendment to the planned development.

4. **VEHICLE STORAGE**

Commercial storage of vehicles not being displayed for sale or rent is prohibited.

5. **NO PUBLIC ADDRESS SYSTEM**

No public address or loudspeaker system that broadcasts outdoors may be used on the property.

6. **LIMITED HOURS OF OPERATION**

Hours of operation for any commercial use on the subject property are limited to 7 a.m. to 9 p.m. daily. Vehicle delivery hours are limited to between 7 a.m. and 9 p.m. daily.

7. **VEHICLE & EQUIPMENT DEALER LIMITATIONS**

- A. The service area, including all repairs and maintenance to vehicles, other than clearing, washing, or waxing of vehicles, must take place within the interior of a building with limited openings oriented not to directly face west toward the Devonwood Subdivision.
- B. Only 1 automobile dealership may be located on the entire site.
- C. Service and repairs may not include major body work.
- D. A car wash, as an accessory use to vehicle sales, must be located indoors.

8. **TRAFFIC IMPACTS**

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

9. **LEE COUNTY COMPREHENSIVE PLAN ALLOCATION**

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

10. **NATIVE BUFFERS**

All required buffers must utilize 100 percent native vegetation.

11. ACCESSORY USES

Accessory uses must be located on the same tract, parcel or outparcel where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel or outparcel.

12. CONCURRENCY

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

13. PRIOR ZONING RESOLUTION

Lee County Zoning Resolution #Z-88-068 is null and void and superseded by this resolution.

14. ENHANCED VEHICLE DISPLAY BUFFER/SETBACK ON US 41.

- A. The buffer on U.S. Route 41 must be enhanced with the required 25-foot setback with vegetation as shown in the enhanced buffer detail on the second sheet of the approved MCP.
- B. Vehicles for sale, rent or display must be set back a minimum of 25 feet from the property boundary on U.S. Route 41.

15. DESIGN STANDARDS

- A. Prior to local development order approval, the exterior elevations must be in substantial compliance with the conceptual elevation submitted on attached Exhibit D.
- B. These designs are preliminary and subject to changes in conformance with this resolution and the LDC including LDC Article IV, Sec. 10-600 "Design Standards and Guidelines for Commercial Buildings and Developments."

16. ACCESS TO US 41

Access to US 41 is not guaranteed and is subject to Florida Department of Transportation (FDOT) approval.

17. **WATER AND SEWER**

Development of this project must connect to both public water and public sewer. At time of local development order, the developer must also demonstrate there is adequate water and sewer capacity to handle level of development as proposed in the development order submittal.

18. **DEVIATION SYMBOL ON MCP**

The pyramid-shaped symbol on the MCP identifies the location of the approved deviations.

19. **OPEN SPACE**

Prior to local development order approval, the development order plans must delineate a minimum of 1.67 acres as open space.

20. **INDIGENOUS PRESERVATION**

Prior to local development order approval, the development order plans must delineate:

- A. A minimum of 1.02 acres of preserve along the west property line separately depicting the 0.69 acre pine flatwoods as Indigenous Preservation and the 0.33 acre disturbed lands as Indigenous Restoration in substantial compliance with the approved MCP and table provided on the single-page plan entitled "Devonwood Indigenous Preserve Plan," dated July 10, 2007, date-stamped "Received Jul 12 2007 Permit Counter," and attached as Exhibit E; and
- B. Indigenous vegetation incorporated into the required buffer along the south property line in substantial compliance with the approved MCP (vegetation can be used for general tree credits but not included in indigenous preservation acreage requirement); and
- C. Access points for proposed mechanical vegetation clearing and planting in the restored areas, unless other means are approved within the by Lee County Division of Environmental Sciences staff through a field inspection and onsite meeting with the contractor who will be conducting the vegetation removal and planting; and
- D. Location of relocated sabal palms (eight foot clear trunk) and replacement or preservation of heritage trees; and
- E. Location of relocated listed Giant Wild Pine (*Tillandsia utriculata*) to similar habitat within the preservation areas (relocation method must be included in the required indigenous management and restoration plan); and

- F. Utilization of one hundred (100) percent native vegetation planting within all required buffers, restoration, and enhanced preservation areas. The applicant may use approved non-native plantings outside preserve areas for accent above the required plantings; and
- G. A 30-foot structure setback from preserve areas.
- H. Prior to local development order approval, the applicant must submit for review and approval by Lee County Division of Environmental Science staff a detailed indigenous management meeting requirements of the LDC §10-415(E.) and restoration plan in substantial compliance with the three-page plan (consisting of two 11-inch by 17-inch sheets and a single 8 ½ -inch by 11-inch sheet), the first sheet entitled "Devonwood Indigenous Preserve Enhancement and Planting Plan." dated April 9, 2007, last revised July 9, 2007, date-stamped "Received Jul 12, 2007 Permit Counter," and attached as Exhibit F. The plans acreage must be consistent with the conditioned required indigenous preservation area.

21. ACCESS TO LAKE DEVONWOOD DRIVE

The location of access to Lake Devonwood Drive on the MCP is conceptual and at final Development Order must be located consistent with any FDOT permit conditions for any access to US 41.

SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from the LDC §34-1352(h) requirement to provide a perimeter fence or wall along the property boundary abutting residential property (to the west), to eliminate the requirement for a fence or wall. This deviation is APPROVED SUBJECT TO Condition #20 above.
2. Deviation (2) seeks relief from the LDC §10-451(b)(1)(a) requirement to allow for indigenous requirements to be met through a combination of preservation of existing native vegetation communities as well as through restoration. This deviation is APPROVED SUBJECT TO Condition #20 above.
3. Deviation (3) seeks relief from the LDC §10-329(d)(1)a. requirement to provide water retention areas to be set back a minimum of 50 feet from a property line, to allow a minimum setback of +/- 27.5 feet from the property line to the south. This deviation is APPROVED, SUBJECT TO the condition that:

The deviation is limited to a water management area consistent with the approved MCP.

4. Deviation (4) seeks relief from the LDC §10-416 (D)(6) requirement to provide a wall or combination berm and wall if roads, drives or parking areas are located less than 125 feet from residential development, to eliminate the requirement for a fence or wall. This deviation is APPROVED SUBJECT TO Condition #20 above.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan
- Exhibit D: Building Elevation Rendering
- Exhibit E: Devonwood Indigenous Preserve Plan
- Exhibit F: Devonwood Indigenous Preserve Enhancement and Planting Plan

The applicant has indicated that the STRAP number for the subject property is:
28-45-24-00-00003.0030

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - A. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and
 - B. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and
 - C. is compatible with existing or planned uses in the surrounding area; and
 - D. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - E. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
 - A. the proposed use or mix of uses is appropriate at the subject location; and

- B. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - C. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed 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 approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

Commissioner Hall made a motion to adopt the foregoing resolution, seconded by Commissioner Janes. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 4th day of February 2008.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Marcia Wilson
Deputy Clerk

BY: Ray Judah
Ray Judah, Chair



Approved as to form by:

Michael D. Jacob
Michael D. Jacob
Assistant County Attorney
County Attorney's Office

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GULF SHORE SURVEYING, INC.

TIM J. PUFAHL, P.L.S.
30930 OIL WELL RD., PUNTA GORDA, FL. 33955
(941) 639-7800 • FAX: (941) 639-7600

NICK POULOS, P.L.S.
2112 SE. 11TH ST., CAPE CORAL, FL. 33990
(239) 458-2388 • FAX: (239) 574-3719

Exhibit A
Legal Description
Property located in Lee County,
Florida

Page 1 of 2

November 2, 2006

Job number 0401

File: 04011002

Metes and bounds description, (supplied by Gulf Shore Surveying, Inc.)

Description

A tract or parcel of land lying in Section 36, Township 45 South, Range 24 East, Lee County, Florida, being the north 320 feet of the south 500 feet of the northeast one quarter (NE ¼) of the Southwest one quarter (SW ¼) of said section, lying west of State Road no. 45, U.S. 41, Tamiami Trail and the north 80 feet of the south 180 feet of the northeast one quarter (NE ¼) of the southwest one quarter (SW ¼) of said section lying west of State Road no. 45, U.S. 41, Tamiami Trail; more particularly described by metes and bounds as follows:

Commence at the southwest corner of the northeast one quarter (NE ¼) of the southwest one quarter (SW ¼) of Section 36, Township 45 South, Range 24 East; Thence N.00°48'20"W. along the west line of said northeast one quarter (NE ¼) of said southwest one quarter (SW ¼) for distance of 100.00 feet to the point of beginning.

From said point of beginning; thence continue N.00°48'20"W. along said west line and the east line of Devonwood Estates, a subdivision as recorded in Plat book 57 at page 44, Lee County public records for a distance of 399.52 feet (measured) ; thence N.89°00'04"E. along the south line of Tract "A", said Devonwood Estates for a distance of 489.91 feet; thence S.31°35'30"E. along the southwesterly right of way line of State Road no. 45, U.S. 41, Tamiami Trail for a distance of 464.12 feet; thence S.89°00'04"W. along the south line of the north 80 feet of the south 180 feet of said northeast one quarter (NE ¼) of the southwest one quarter (SW ¼) for a distance of 727.47 feet to the point of beginning.

Containing 5.583 Acres more or less.

Bearing mentioned herein are based on the southwesterly right of way line of State road no. 45, U.S. 41, Tamiami Trail bearing S.31°35'30"E.

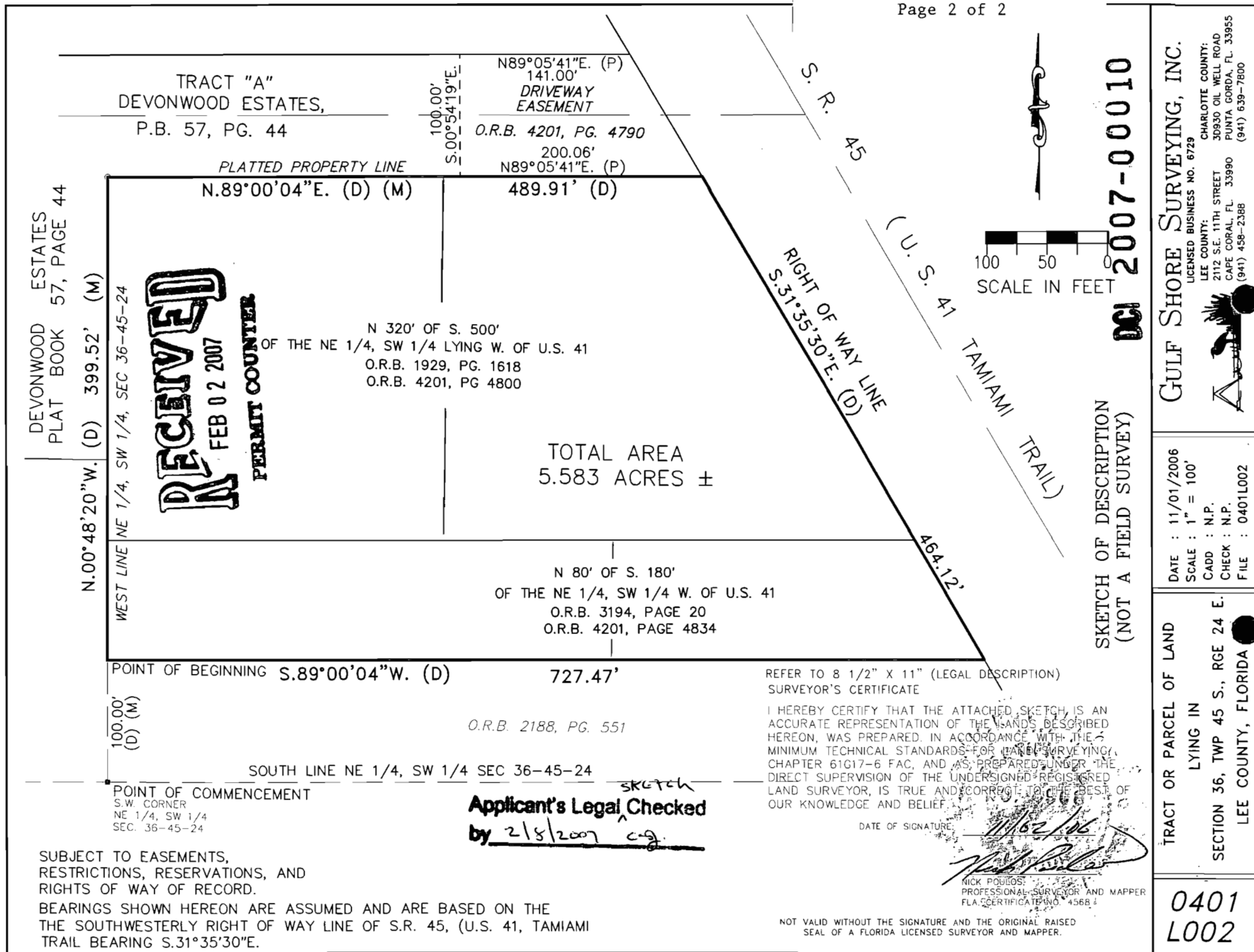
Refer to 8 ½" x 11" sketch
Gulf Shore Surveying, Inc.

Applicant's Legal Checker
[Signature] 2/8/2007

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[Signature] 1/02/06
Nick Poulos
Professional Surveyor and Mapper
Florida Certificate No. 4568

DCI 2007-00010



DCI2007-00010

Zoning Map

9/18/2007

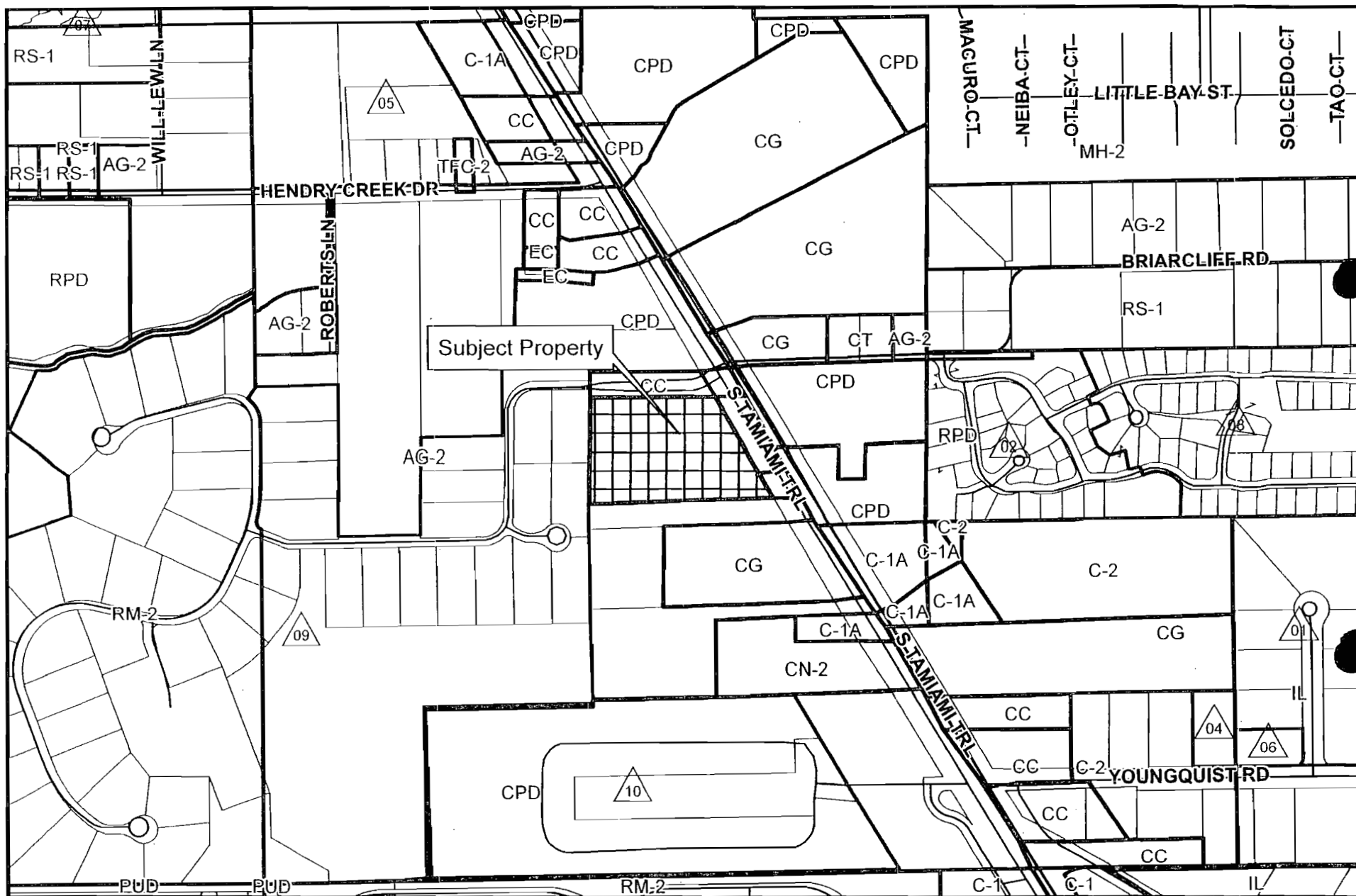
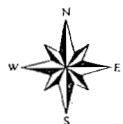


EXHIBIT B



Barraco
and Associates, Inc.
CIVIL ENGINEERING - LAND SURVEYING
LAND PLANNING - LANDSCAPE DESIGN
www.barraco.net
2771 MCGREGOR BOULEVARD
POST OFFICE DRAWER 2800
FORT MYERS, FLORIDA 33902-2800
PHONE (239) 461-3170
FAX (239) 461-3169
FLORIDA CERTIFICATES OF AUTHORIZATION
ENGINEERING 7965 - SURVEYING LB-6040

PREPARED FOR:

**GP
INVESTMENTS,
LLC.**

11241 MARBLEHEAD MANOR CT.
FORT MYERS, FL 33906

TEL (239) 939-7474
FAX (239) 939-5512

PROJECT DESCRIPTION

Devonwood
Car
Dealership

PART OF SECTION 36
TOWNSHIP 45 SOUTH
RANGE 24 EAST
LEE COUNTY, FLORIDA

PROJECT ENGINEER

NOT VALID WITHOUT EMBOSSED SEAL, DONATURF AND LIFE
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FILE NAME	22382203.DWG
LAYOUT	LAYOUT1
LOCATION	J:\22382203\22382203.DWG
PLOT DATE	MON 5-5-2008 - 2:43 PM
PLOT BY	TROY PETERSON
DESIGN BY	

CROSS REFERENCED DRAWINGS

BASE PLAN = 22 NE 2700 DNG

PLAN REVISIONS	
4-23-07	REVISED PER COMMENTS
06-15-07	REVISED PER COMMENTS
10-08-07	25' BUFFER TO DEVONINGGG DRIVE

PLAN STATE

DEVELOPMENT REGULATIONS,
USES, DETAILS, INDIGENOUS
PLAN & BUFFER DETAIL

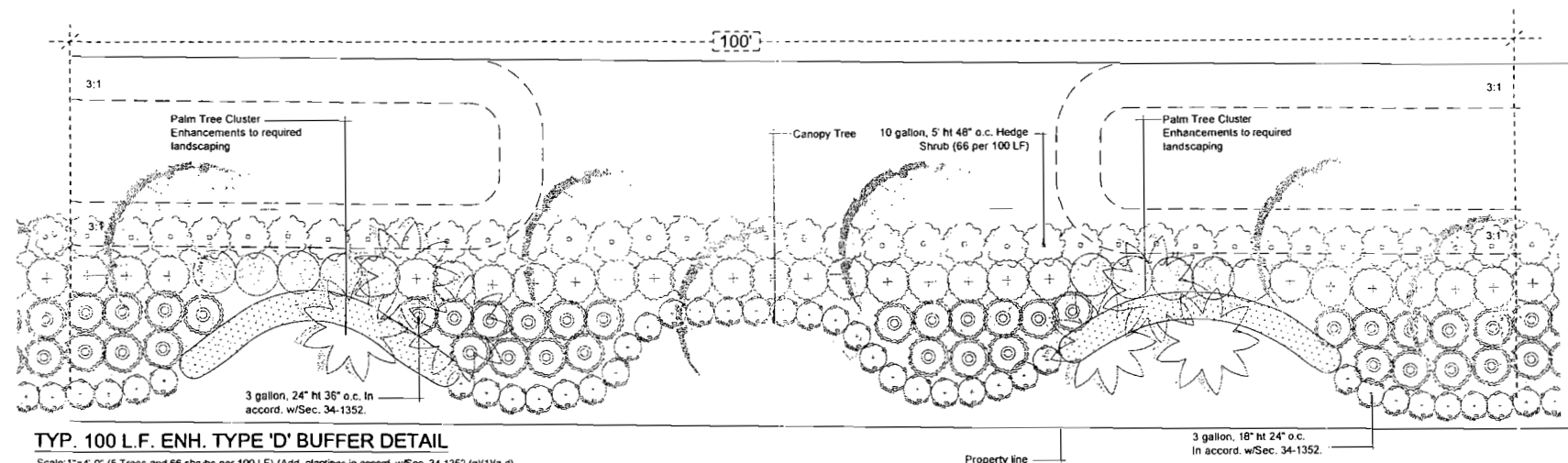
PROJECT / FILE NO	SHEET NUMBER
22362	2



DEVIATION DETAIL

Approved as Exhibit C
MCP Page 2 of 2
Resolution # 2-01-05

DCI 2007-00010



TYP. 100 L.F. ENH. TYPE 'D' BUFFER DETAIL

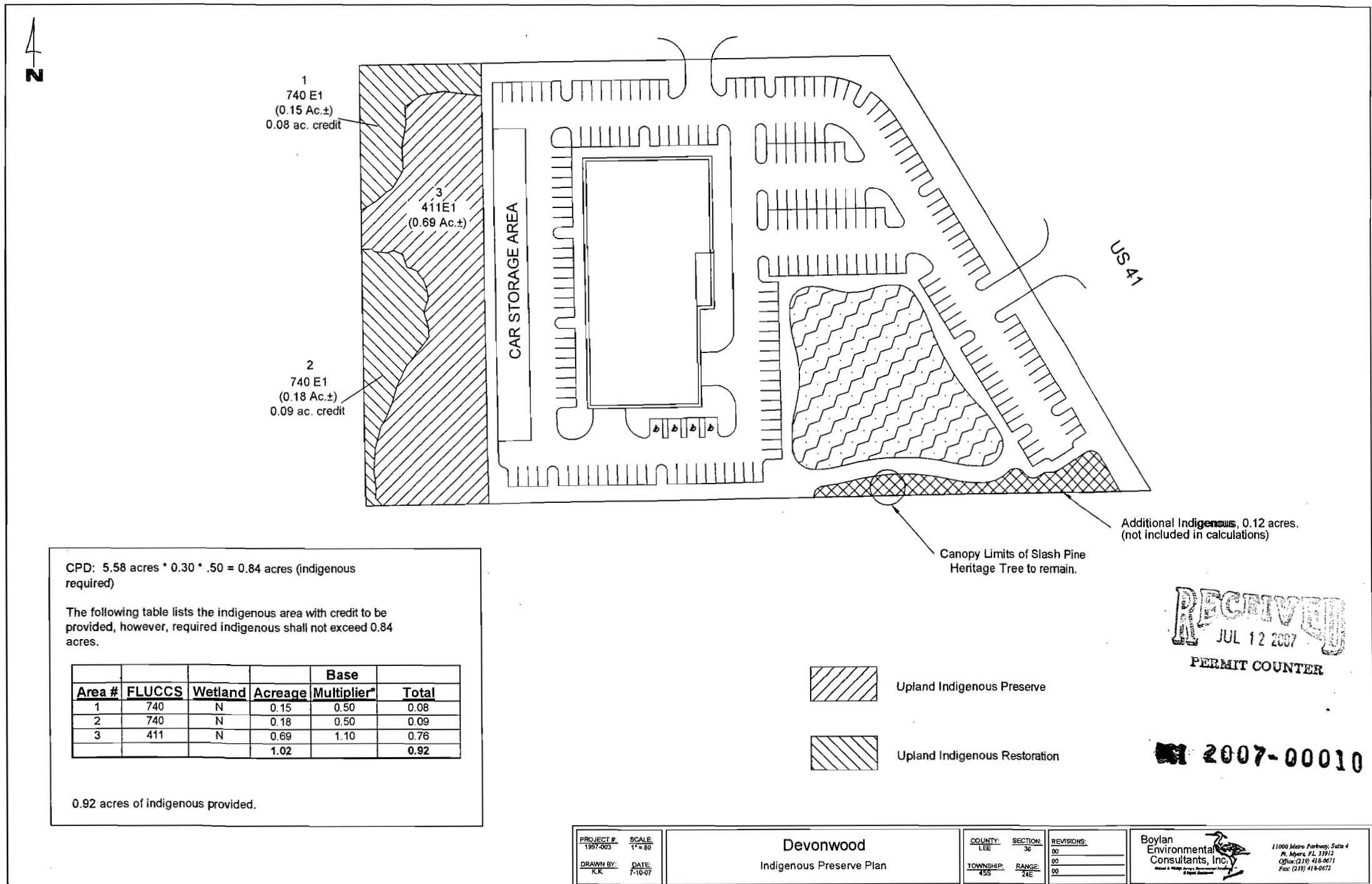
Scale: 1"=4'-0" (5 Trees and 66 shrubs per 100 LF)-(Add. plantings in accord. w/Sec. 34-1352 (g)(1)(a-d)

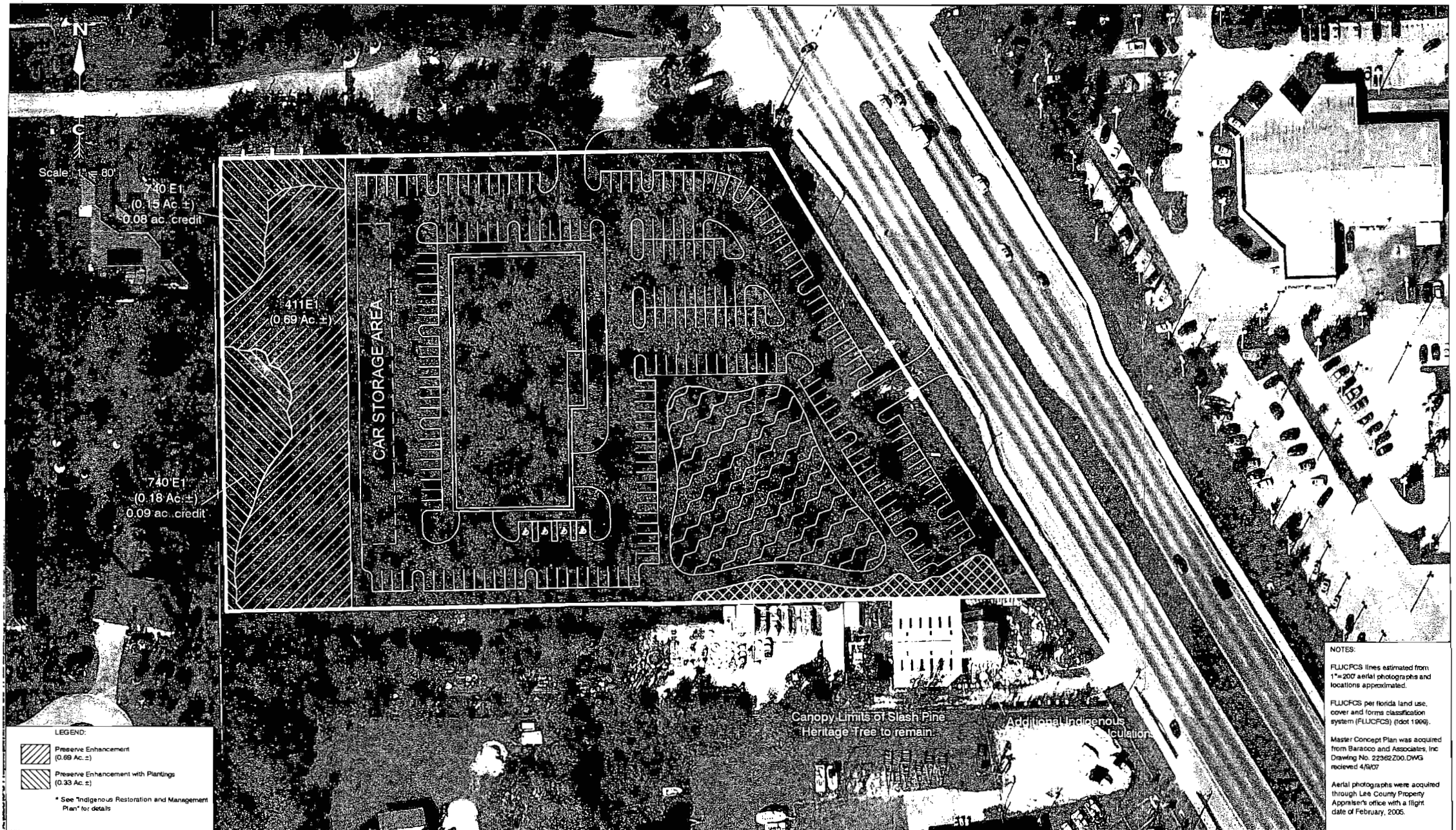
PCI 2007-00010

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EXHIBIT D





Boylan Environmental Consultants, Inc. Wetland & Wildlife Surveys, Environmental Permitting, Impact Assessments 11000 Metro Parkway, Suite 4, Ft. Myers, FL 33906 (239) 418-0671	Drawn By: K.K.	Date: 4/9/07	Category: Enhancement	Devonwood Indigenous Preserve Enhancement And Planting Plan	Revisions 7-9-07	Date:	Page
	Job Number 1997-003	S/T/R	Scale: 1" = 80' County Lee		DECLINED APR 12 2007 PERMIT COUNTER		
	36/45S/24E						Exhibit

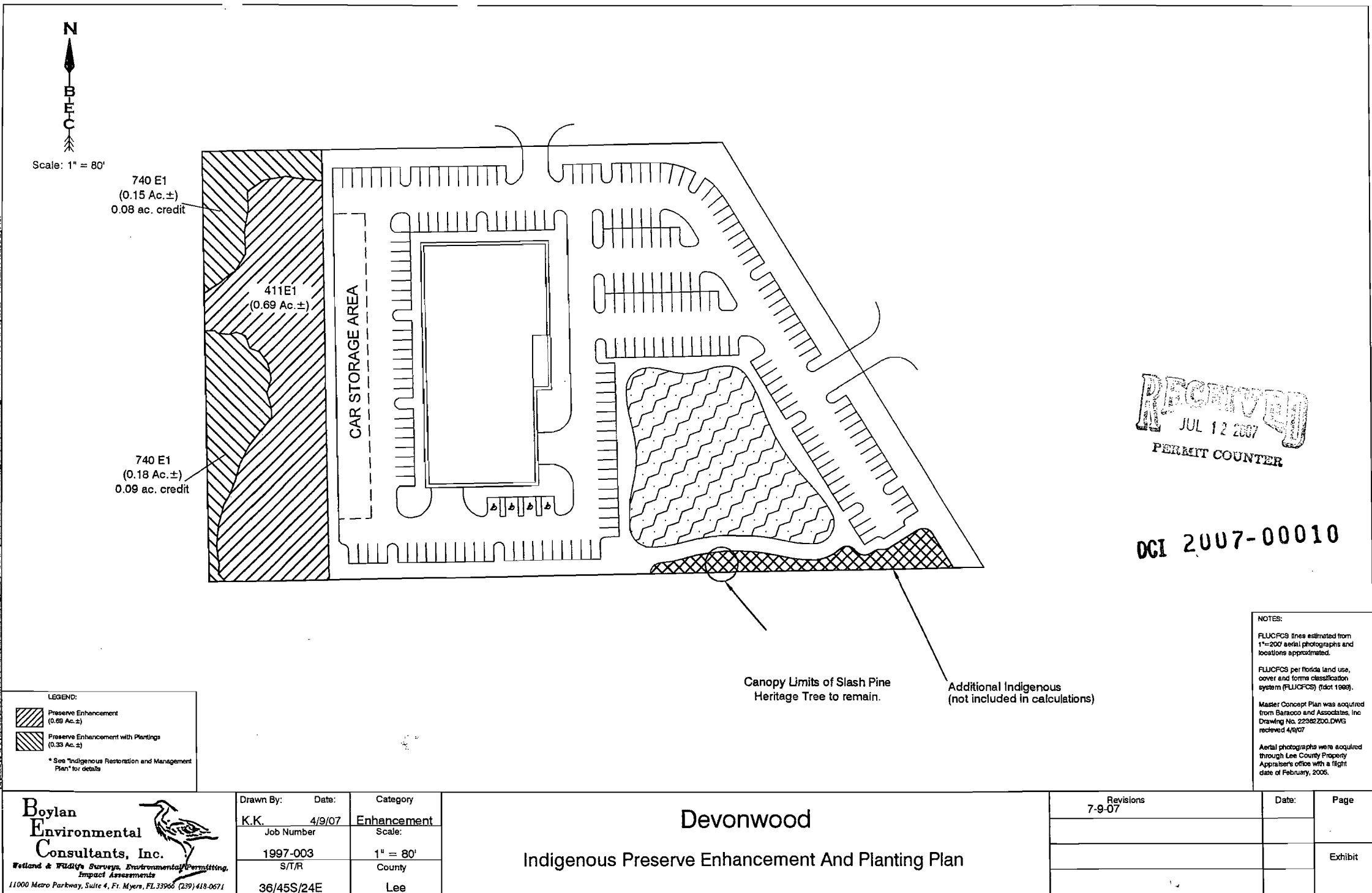


Table 1. Indigenous Restoration Plan for Lee County

Project: Devonwood Dealership CPD

Acres to be Restored: 0.33

8' Clear Trunk		6' Tree		Three Gallon		One Gallon	
#	Species	#	Species	#	Species	#	Species
		25	Sand Live Oak	40	Myrsine	30	Elliott's lovegrass
		30	Live Oak	45	Saw palmetto	25	Elliott's milk pea
		25	Scrub Oak	40	Shiny blueberry	30	Muhly grass
				45	Wax myrtle	25	Partridge pea
				40	White indigo berry	30	Prickly pear
				40	Wild coffee	30	Purple love grass
				40	Beauty berry	30	Wire grass
Total:	0		80		290		200
Conversion Factor:	x10		x6		x3		x1
Provided Subtotal:	0		480		870		200
Provided Total Plants:				1550			
Required Plants:				1549			

The above table is a conceptual plan. The exact size, number, and density of plants will be determined during the D.O. review process. In addition, species of plants may vary based on availability at the time of planting.

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