MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Monroe County Planning Commission

From: Joseph Haberman, Principal Planner
Susan Grimsley, Assistant County Attorney

Through: Townsley Schwab, Acting Sr. Director of Planning & Environmental Resources

Date: July 8, 2008

Subject: *Administrative Appeal by VOF LLC concerning property located at 1128 Greenbriar Road, Duck Key, approximate Mile Marker 61, Real Estate No. 00377790.000000*

Meeting: July 23, 2008

I DECISION BEING APPEALED:

The Appellant is appealing a decision by Townsley Schwab, Acting Sr. Director of Planning & Environmental Resources, which was set forth in a letter of understanding to an agent of the property owner, Donald L. Craig, on March 5, 2008 (Attachment A). The precise decision being appealed is a determination that a proposed guest check-in/welcome center & guest swimming pool are accessory uses/structures and thereby may not be permitted on the subject property in that the accessory uses/structures would not be located on the same lot or on a contiguous lot under the same ownership as the principal use.

Subject Property, 1128 Greenbriar Road, Duck Key (2006)

Reviewed by

W:\GROWTH MANAGEMENT\Geo\Middle Keys\061 Duck\Greenbriar Road Duck Key\1128 Greenbriar Rd Duck Key\20080708 1128 Greenbriar Rd Duck Welcome Center Swimming Pool RE 00377790 Adm Appeal PC SR.doc

A. Location:
Address: 1128 Greenbriar Road, Duck Key, approximate Mile Marker 61 (oceanside)
Legal Description: Block 8, Lot 1, Indies Island, Section 1, Part 1, Toms Harbor, PB5-82
Real Estate Number: 00377790.000000

B. Appellant: Donald L. Craig, the Craig Company, on behalf of VOF LLC
C. Property Owner: VOF LLC

II PROCESS:

Pursuant to §9.5-521 of the Monroe County Code (MCC), the Planning Commission shall have the authority to hear and decide appeals from any decision, determination or interpretation by any administrative official with respect to the provisions of MCC Chapter 9.5 and the standards and procedures set forth, except that the Board of County Commissioners shall hear and decide appeals from administrative actions regarding the floodplain management provisions of MCC Chapter 9.5.

An appeal may be initiated by an owner, applicant, adjacent property owner, any aggrieved or adversely affected person, as defined by section 163.3215(2), Florida Statutes, or any resident or real property owner from any order, decision, determination or interpretation by any administrative official with respect to the provisions of MCC Chapter 9.5.

The Planning Commission shall consider the appeal at a duly called public hearing following receipt of all records concerning the subject matter of the appeal. Any person entitled to initiate an appeal may have an opportunity to address the commission at that meeting; and argument shall be restricted to the record below except that a party appealing an administrative decision, determination or interpretation shall be entitled to present evidence and create a record before the Planning Commission; any appeals before the hearing officer shall be based upon and restricted to the record.

III RELEVANT PRIOR COUNTY ACTIONS:

On December 14, 2007, Donald L. Craig, on behalf of a prospective buyer of the subject property (who subsequently purchased the property and is now the current owner), requested a pre-application conference with Planning & Environmental Resources Department staff in order to discuss the proposed guest check-in/welcome center & guest swimming pool.

On December 17, 2007, a pre-application conference regarding the proposed development was held at the office of the Monroe County Planning & Environmental Resources Department on Plantation Key. Attendees of the meeting included Donald L. Craig of the Craig Company, Julianne Thomas, Monroe County Planner and Heaven Handley, Monroe County Planner.

On February 1, 2008, a second meeting regarding the proposed development was held in at the office of the Monroe County Planning & Environmental Resources Department in

Reviewed by G.

Marathon. Attendees of the meeting included Barbara Mitchell of the Craig Company, Townsley Schwab, Monroe County Acting Sr. Director of Planning & Environmental Resources and Joseph Haberman, Monroe County Principal Planner.

Following the second meeting and a review of the land development regulations, Townsley Schwab, Acting Sr. Director of Planning & Environmental Resources, issued a letter of understanding concerning the development to Donald L. Craig on March 5, 2008.

IV BACKGROUND INFORMATION:

A. Total Size of Site: 10,500 ft² (0.24 acres)
B. Land Use District: Destination Resort (DR)
C. Future Land Use Map (FLUM) Designation: Mixed Use / Commercial (MC)
D. Tier Designation: Tier III
E. Existing Vegetation / Habitat: Developed with sparse vegetation
F. Community Character of Immediate Vicinity: Mixed Use, transient resort and single-family residential

V REVIEW OF APPLICATION:

The decision being appealed is a determination that a proposed guest check-in/welcome center & guest swimming pool are accessory uses/structures and thereby may not be permitted on the subject property in that the accessory uses/structures would not be located on the same lot or on a contiguous lot under the same ownership as the principal use.

The proposed redevelopment plan involves converting an existing single-family residence into the guest check-in/welcome center, constructing a guest swimming pool and carrying out associated improvements. The check-in/welcome center, swimming pool and other amenities would be for the benefit and use of the owners and guests of certain transient residential units in the Development of Regional Impact (DRI) that are not owned by Hawks Cay resort.

In the pre-application conference application, the Applicant (now Appellant) stated that the site's existing residential use would be changed to accessory use of units at Hawks Cay not owned by the resort. Staff concurred, and continues to consider, that the proposed check-in/welcome center, swimming pool and other amenities would be classified as accessory uses and structures. The principal use would be the transient residential units.

As defined in MCC §9.5-4 (A-2), *accessory uses or accessory structures* means a use or structure that is subordinate to and serves a principal use or structure; is subordinate in area, extent and purpose to the principal use or structure served; contributes to the comfort, convenience or necessity of occupants of the principal use or structure served; and is located on the same lot or on contiguous lots under the same ownership and in the same land use district as the principal use or structure.

The proposed check-in/welcome center, pool and other amenities would be subordinate to and serve a principal use and principal structures; would contribute to the comfort, convenience or necessity of occupants of the principal use and structures served; and would be in the same land use district as the principal use and structures.

However, the proposed accessory development would not be located on the same lot or on contiguous lots under the same ownership. As defined in MCC §9.5-4 (C-23), *contiguous* means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements. The subject property is bordered by the public right-of-way of Greenbriar Road to the North, the public right-of-way of Bimini Drive to the West, a canal to the South and a residential property to the East. Therefore, the only contiguous property is the residential property to the East (legally described as Block 8, Lot 2, Indies Island, Duck Key, Section 1, Part 1, Toms Harbor).

Based on information provided, Staff determined that all of the condominium association / cooperative units that would be associated with the proposed check-in/welcome center and swimming pool are located across the public right-of-ways to the North of the subject property on non-contiguous lots. Therefore, in accordance with MCC §9.5-4 (A-2), the proposed accessory uses and structures cannot be constructed on the subject property.

In the basis of the appeal, the Appellant argues that the County has misinterpreted the facts that apply to the subject property in regards to its status within the DR District and under the Hawks Cay DRI.

Destination Resort (DR) District

The subject property is located in the DR District. The Appellant has asserted that vacation rental uses are permitted in the DR District and that there are no regulations which prevent the location of the office serving the vacation rental permitees from being in the same land use district or which prevent the office of a rental management company from providing amenities to those who use their services at the same location.

As defined in MCC §9.5-4 (V-5), *vacation rental or unit* means an attached or detached dwelling unit that is rented, leased or assigned for tenancies of less than 28 days duration. Vacation rental use does not include hotels, motels, and RV spaces, which are specifically addressed in each district.

Pursuant to MCC §9.5-243, vacation rental uses may be permitted as-of-right in the DR District in accordance with MCC §9.5-534. If a property meets eligibility requirements, annual special vacation rental permits may obtained by property owners to rent or lease a dwelling unit for tenancies of less than 28 days. In general, special vacation rental permits are for "permanent" residential dwelling units as residential dwelling units approved as "transient" are already allowed to have transient housing for tenancies of less than 28 days duration.

Based on the information submitted, Staff has found that the units in question were approved as transient rental units, not vacation rental units operating under annual vacation rental permits as set forth in MCC §9.5-534. Therefore, although used similarly, the provisions relating to vacation rental do not necessarily apply to the proposed development.

However, even if the units were a vacation rental use as defined under the land development regulations, the commercial/office use of facilitating the vacation rental use would be considered its own specific use, not a required aspect of the vacation rental. Therefore, Staff has determined that a rental management company may not operate at the same location as the vacation rental use unless the commercial/office use may be permitted. Staff has found that the absence of such provision does not entitle a property owner carry out such as use or activity.

The Appellant also asserts that parcels zoned as DR have a minimum parcel size of 10 acres and that one or more hotels are contemplated. Based on the size of the parcel, the Appellant states it is nearly impossible to develop the required accessory uses serving the contemplated hotels without being separated by a road.

Staff agrees that it would be difficult to develop the accessory uses/structures on the same or contiguous properties as the principal uses for this particular proposal (certain transient residential units in the DRI that are not owned by Hawks Cay resort). However, Staff does not believe that this hardship alleviates the property owner from the requirements of MCC §9.5-4 (A-2).

In addition, although the units that would utilize the proposed check-in/welcome center and swimming pool do not currently have accessory uses under their ownership, the units were initially constructed with the understanding that the owners/guests could utilize the existing accessory uses of the Hawks Cay development (not considering any fairness of cost or contractual issues between the unit owners and operators of Hawks Cay to do so).

Hawk's Cay Development of Regional Impact (DRI)

The Appellant asserts that any development on the subject property should be reviewed with the understanding that it is part of the DRI agreement.

Based on the information provided by the Appellant, the units whose guests would utilize the proposed check-in/welcome center and pool are located within areas that were included as part of the DRI agreement. However, although the subject property is also within the DR District, Staff has determined that it was not included as part of the DRI agreement. On December 5, 1986, the Board of County Commissioners passed and adopted Resolution No. 365-1986 (Attachment B), which granted a DRI agreement and provided development approval for a resort expansion at Hawks Cay. The DRI was later amended by the Board under Resolution No. 335A-1996 (Attachment B). Attachment A to Resolution No. 365-1986 includes a master development plan that shows the areas affected by the DRI agreement. The master development plan shows the subject property as

hatched out and therefore not included as part of the DRI agreement. In addition, Exhibit One of Resolution No. 335A-1996 is an amended master development plan and shows the subject property as hatched out and identifies it as an "out parcel."

Therefore, Staff has found that there is no need to address the types of uses and development permitted as a result of the DRI agreement as it does not apply to the subject property.

VI RECOMMENDATION:

Staff recommends that the Planning Commission uphold the decision of the Director of Planning & Environmental Resources and DENY the administrative appeal request.

Reviewed by

Attachment A:
Letter of Understanding to Donald L. Craig from Townsley Schwab, Monroe County Acting Sr. Director of Planning & Environmental Resources, dated March 5, 2008

Reviewed by

County of Monroe
Growth Management Division

Planning & Environmental Resources Department
2798 Overseas Highway, Suite 410
Marathon, FL 33050
Voice: (305) 289-2500
FAX: (305) 289-2536

Board of County Commissioners
Mayor Charles "Sonny" McCoy, Dist. 3
Mayor Pro Tem Mario Di Gennaro, Dist. 4
Dixie Spehar, Dist. 1
George Neugent, Dist. 2
Sylvia J. Murphy, Dist. 5

We strive to be caring, professional and fair

March 5, 2008

Donald L. Craig, AICP
The Craig Company
PO Box 970
Key West, FL 33040

SUBJECT: LETTER OF UNDERSTANDING CONCERNING THE DEVELOPMENT OF A GUEST CHECK-IN/WELCOME CENTER & GUEST SWIMMING POOL AT 1128 GREENBRIAR ROAD, DUCK KEY, MILE MARKER 61, A PROPERTY HAVING REAL ESTATE NUMBER 00377790.000000

Mr. Craig,

Pursuant to §9.5-43 of the Monroe County Code (MCC), this document shall constitute a Letter of Understanding (LOU).

On December 17, 2007, a Pre-Application Conference regarding the above-referenced property was held at the office of the Monroe County Planning & Environmental Resources Department on Plantation Key. Attendees of the meeting included Donald L. Craig (hereafter referred to as "the Applicant") and Julianne Thomas, Planner and Heaven Handley, Planner (hereafter referred to as "Staff").

On February 1 2008, a second meeting regarding the proposed development was held in Marathon. Attendees of the meeting included Barbara Mitchell of the Craig Company; Townsley Schwab, Acting Senior Director of Planning & Environmental Resources; Susan Grimsley, Assistant County Attorney and Joseph Haberman, Principal Planner.

Materials presented for review included:

(a) Pre-Application Conference Request Form; and
(b) Monroe County Property Record Card; and
(c) Monroe County Land Use District Maps and Future Land Use Maps; and
(d) Aerial Photography; and

(e) Special Purpose Topographic Survey by R.E. Reese, dated December 3, 2007; and
(f) Site Plan by Cortex Companies, dated December 12, 2007

I. APPLICANT PROPOSAL

1. The Applicant is proposing to redevelop a property located at 1128 Greenbriar Road on Duck Key. The property is currently developed with a single-family residence.

   The proposed redevelopment plan involves converting the existing single-family residence into a guest check-in / welcome center and constructing a guest swimming pool. In addition, the proposal includes the carrying out of several associated improvements, including landscaping, resurfacing an existing dock and constructing a deck area around the swimming pool, a tiki hut and an off-street drop-off / parking area.

Subject Property, 1128 Greenbriar Road

The check-in / welcome center, the swimming pool, deck areas, docking facilities and tiki hut would be for the benefit and use of the owners and guests of units in the Hawk's Cay development that are not owned by the resort.

The Applicant could not provide Staff with a total number and specific location(s) of the units which would utilize the check-in / welcome center and swimming pool if approved. It is Staffs' understanding that this information cannot be provided until a new condominium/cooperative for the units is officially formed.

II. SUBJECT PROPERTY DESCRIPTION

1. The subject property is located at 1128 Greenbriar Road on Duck Key, at approximate Mile Marker 61 (oceanside).

2. The subject property consists of one (1) parcel which is legally described as Block 8, Lot 1, Indies Island, Duck Key, Section 1, Part 1, Toms Harbor (PB5-82). The parcel is identified as real estate number 00377790.000000.

3. According to the Monroe County Property Appraiser's records, the parcel is currently owned by Randolph and Teresa Ulrich. However, it has been indicated by the Applicant

that property is under contract for purchase, or has recently been acquired, by Leon Andors.

4. According to the Monroe County Property Appraiser's records, the parcel consists of 10,500 ft^2 (0.24 acres) of total land area.

III. RELEVANT PRIOR COUNTY ACTIONS

1. On December 5, 1986, the Board of County Commissioners passed and adopted Resolution No. 365-1986, which granted a Development of Regional Impact (DRI) and provided development approval for a resort expansion at Hawk's Cay.

   Attachment A to Resolution No. 365-1986 includes a master development plan that shows the areas affected by the DRI agreement. The master development plan indicates that the subject property was not included as part of the DRI agreement. However, based on the information provided by the Applicant, the units, whose guests would utilize the check-in / welcome center and swimming pool, are located within areas that were included as part of the DRI agreement.

IV. REVIEW OF REDEVELOPMENT PROPOSAL

The following land development regulations directly affect the proposal. However, there are other land development regulations not referred to nor described in this letter which may govern future development as well:

1. The subject property has a Land Use District designation of Destination Resort (DR), a Future Land Use Map (FLUM) designation of Mixed Use / Commercial (MC) and a tier designation of Tier III.

2. There is an existing single-family residence on the subject property. A single-family, detached dwelling unit is an as-of-right permitted use in the DR District.

   No building permit for the construction of the single-family residence was found for review by Staff. However, several building permits for improvements to the single-family residence were found. In addition, the Monroe County Property Appraiser's records indicate that a residential unit has been on the tax roll from 1990 to 2007 and currently attributes one (1) building to the property. The year built of the building is indicated as 1966.

   Pursuant to MCC §9.5-120.4(a), the Rate of Growth Ordinance (ROGO) shall not apply to the redevelopment, rehabilitation or replacement of any lawfully-established residential dwelling unit which does not increase the number of residential dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement. Therefore, owners of land containing residential dwelling units shall be entitled to one (1) unit for each such unit lawfully-established. Administrative Interpretation 03-108

provides the criteria to be used by Staff to determine whether or not a residential unit was lawfully-established.

Based on a review of the records, Staff determined that the existing dwelling unit was lawfully-established.

The Applicant did not indicate the future of the dwelling unit. If the dwelling unit is replaced on the subject property, the replacement dwelling unit must be built in compliance with all applicable sections of the Monroe County Code. Further, if the existing dwelling unit is substantially improved as defined in MCC §9.5-4, the dwelling unit must be brought into compliance with all applicable sections of the Monroe County Code. If the dwelling unit is not to be replaced on the subject property, in accordance with MCC §9.5-120.4(b), the dwelling unit may be transferred off-site to an eligible receiver site as affordable housing. The sender and receiver sites must meet the criteria set forth in MCC §9.5-120.4(b). The new affordable housing dwelling unit must meet the requirements set forth in MCC §9.5-4(A-5).

3. As proposed, the check-in / welcome center, swimming pool and other amenities would be for the benefit and use of the owners and guests of units in the Hawk's Cay development that are not owned by the resort.

   In the pre-application conference application, the Applicant states that the "site's short term residential use [shall be] changed to accessory use of units at Hawk's Cay not owned by the resort." Staff concurs that the proposed check-in / welcome center, swimming pool and other amenities would be classified as accessory uses/structures. The principal use/structures would be the residential units in the Hawk's Cay development.

   Accessory uses are not listed as a permitted use in the DR District, as provided in MCC §9.5-248. However, Staff has determined that accessory uses may be permitted at the degree in which the principal use is permitted: as-of-right, as a minor conditional use; or as a major conditional use.

4. As defined in MCC §9.5-4 (A-2), *accessory uses or accessory structures* means a use or structure that is subordinate to and serves a principal use or structure; is subordinate in area, extent and purpose to the principal use or structure served; contributes to the comfort, convenience or necessity of occupants of the principal use or structure served; and is located on the same lot or on contiguous lots under the same ownership and in the same land use district as the principal use or structure.

   The proposed check-in / welcome center, swimming pool and other amenities would be subordinate to and serve a principal use and principal structures; would contribute to the comfort, convenience or necessity of occupants of the principal use and structures served; and would be in the same land use district as the principal use and structures.

However, the proposed check-in / welcome center, swimming pool and other amenities would not be located on the same lot or on contiguous lots under the same ownership. As defined in MCC §9.5-4 (C-23), *contiguous* means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements. The subject property is bordered by the public right-of-way of Greenbriar Road to the North, the public right-of-way of Bimini Drive to the West, a canal to the South and a residential property to the East. Therefore, the only contiguous property is the residential property to the East (legally described as Block 8, Lot 2, Indies Island, Duck Key, Section 1, Part 1, Toms Harbor).

According to the information provided, all of the condominium association / cooperative units that would be associated with the proposed check-in / welcome center and swimming pool are located across the public right-of-ways to the North of the subject property on non-contiguous lots. Therefore, in accordance with MCC §9.5-4 (A-2), the proposed accessory uses and structures cannot be constructed on the subject property.

Pursuant to MCC §9.5-43, you are entitled to rely upon the representations set forth in this letter as accurate under the regulations currently in effect. This letter does not provide any vesting to the existing regulations. If the Monroe County Code or Year 2010 Comprehensive Plan are amended, the project will be required to be consistent with all goals, objectives and standards at the time of development approval. The Planning & Environmental Resources Department acknowledges that all items required as a part of the application for development approval may not have been addressed at the December 17, 2007 meeting, and consequently reserves the right for additional comment. The information provided in this letter may be relied upon, with the previous disclaimers, for a period of three (3) years. The Director of Planning, upon the request of the property owner, may review and reaffirm the representations set forth in this letter for an additional period of time.

You may appeal decisions made in this letter. If you choose to do so, please contact the Planning Commission Coordinator, Nicole Petrick, at (305)289-2500 for the necessary forms and information. The appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) working days from the date of this letter. In addition, please submit a copy of your application to Nicole Petrick, Planning Commission Coordinator, Monroe County Planning & Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, FL 33050.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter, or if we may further assist you with your project, please feel free to contact our Marathon office at (305)289-2500.

Sincerely yours,

Townsley Schwab,
Acting Senior Director Planning & Environmental Resources

Cc: Joe Paskalik, Building Official
Ronda Norman, Senior Director of Code Enforcement
Ralph Gouldy, Senior Administrator of Environmental Resources
Joseph Haberman, Principal Planner

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Attachment B:
Resolution No. 365-1986 & Resolution No. 335A-1996

Reviewed by

RESOLUTION NO. 365 -1986

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, APPROVING THE APPLICATION FOR DEVELOPMENT APPROVAL OF HAWK'S CAY INVESTORS LIMITED AND GRANTING DEVELOPMENT OF REGIONAL IMPACT AND FINAL DEVELOPMENT APPROVAL FOR HAWK'S CAY EXPANSION DRI, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, on August 12, 1986, Hawk's Cay Investors Limited, hereinafter referred to as "Applicant", submitted to Monroe County an Application for Development Approval (ADA) for a development of regional impact (DRI) known as "Hawk's Cay Resort", in accordance with Sections 380.05 and 380.06, Florida Statutes; and

WHEREAS, on September 22, 1986, the South Florida Regional Planning Council (RPC) found the Application sufficient; and

WHEREAS, Hawk's Cay Resort as proposed in the ADA when completed will be a hotel type destination resort consisting of 622 hotel suites, conference facilities, retail areas, restaurants and recreational facilities on approximately 61 acres of land located in unincorporated Monroe County, Florida, on Indies Islands at Duck Key; and

WHEREAS, on May 15, 1986, the applicant and the Florida Department of Community Affairs entered into a Section 380.06(8), F.S., preliminary development agreement for Hawk's Cay Resort which authorized the applicant to undertake preliminary development of 87 additional guest rooms and development and redevelopment of commercial facilities not to exceed 7,400 square feet prior to the issuance of a final DRI development order; and

WHEREAS, the RPC after reviewing the ADA for Hawk's Cay Resort issued its report and recommendations on October 7, 1986, in which it recommended that the DRI be approved subject to certain conditions; and

WHEREAS, pursuant to Sections 380.05 and 380.06, F.S., the Board of County Commissioners of Monroe County, hereinafter referred to as either the "Board" or the "County", as the local government having jurisdiction, is authorized and required by law to consider the Hawk's Cay Resort DRI ADA; and

WHEREAS, the Board has received and reviewed the report and recommendations of the RPC; and

WHEREAS, the Board on December 5, 1986, held a public hearing on the ADA and the final development plan at which all parties were afforded the opportunity to present evidence and argument on all issues, conduct cross-examination and submit rebuttal evidence, and any member of the general public requesting to do so was given an opportunity to present written or oral communication; and

WHEREAS, pursuant to Section 380.06, F.S., public notice of said hearing was duly published on October 5, 1986, in the "Key West Citizen" and way duly provided to the Florida Department of Community Affairs (DCA), the RPC, and other persons designated by DCA rules; and

WHEREAS, the Board at its December 5, 1986, public hearing fully considered the ADA, the report of the RPC, and the evidence of record presented at the public hearing, and was otherwise fully advised in the premises; now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that said Board makes the following

Findings of Fact:

1. The name of the development is Hawk's Cay Resort. The authorized agents of the developer are Michael Halpern, Key West, Florida, and Wade L. Hopping, Tallahassee, Florida. The name of the developer is Hawk's Cay Investors Limited, 150 East Sample Road, Pompano Beach, Florida, 33064.

2. The legal description of the property comprising the proposed Hawk's Cay Resort DRI is set forth in the ADA and is incorporated herein by reference.

3. On December 3, 1985, the Monroe County Zoning Board recommended approval of the Hawk's Cay Resort with rezoning classifications compatible with the DRI uses proposed in the ADA. On September 24, 1986, the Zoning Board adopted the final major development approval for Hawk's Cay Resort, which included adoption of a RU-7 zoning designation for the entire site. Nevertheless, a Monroe County land use map related to the County's Comprehensive Land Use Plan, which was being

contemporaneously developed, did not reflect the recommended rezoning in its entirety. The map designated a portion of the Hawk's Cay Resort as being in the Suburban Residential (SR) and Suburban Commercial (SC) zoning categories rather than in the Zoning Board approved RU-7 category.

4. When developed in accordance with the conditions imposed by this development order, the Hawk's Cay Resort DRI:

(a) will not have a significant negative impact on the environment and natural and historical resources of the region;

(b) will have a favorable economic impact on the economy of the region by providing new employment and net positive regional impacts on the economy of the region;

(c) will efficiently use water, sewer, solid waste disposal, and other necessary public facilities;

(d) will efficiently use public transportation facilities;

(e) will not adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment; and

(f) will not create an unreasonable additional demand for, or additional use of, energy; and

(g) will make adequate provisions for the public facilities needed to accommodate the impacts of the development.

BE IT FURTHER RESOLVED THAT THE BOARD ENTERS THE FOLLOWING CONCLUSIONS OF Law:

1. The proceedings herein have been conducted in compliance with the provisions of Chapter 380. Florida Statutes; and all conditions precedent to the granting of development approval required by Chapter 380, F.S., have occurred.

2. The proposed Hawk's Cay Resort DRI is located within an Area of Critical State Concern designated pursuant to the provisions of Section 380.05, F.S. and, as approved herein, the DRI complies with the land development regulations of such Area and with the provisions of Section 380.06.

3. The proposed Hawk's Cay Resort does not unreasonably interfere with the achievement of the objectives of the adopted state land development plan applicable to the area.

4. The proposed Hawk's Cay Resort DRI and final development plan, when developed subject to the conditions imposed by this development order, are consistent with the Monroe County Comprehensive Plan, and all other local land development regulations.

5. The proposed Hawk's Cay Resort DRI is in all material aspects consistent with the report and recommendations of the RPC submitted pursuant to Section 380.06(12), F.S.

6. The DRI ADA and final development plan for all phases of the Hawk's Cay Resort, as described in the ADA and Exhibit 2 attached to this development order, are hereby approved, subject to the general and special conditions of development contained in Attachment A which is made a part hereof by reference.

7. Unless otherwise specifically provided in Attachment A, any changes proposed by the Applicant to the ADA, as amended herein, which exceed the limits established in Section 380.06(19), F.S., which limits are presumed not to be substantial deviations, shall be submitted to the Board, the RPC, and the DCA for a determination if such changes constitute a substantial deviation and, therefore, requiring further review pursuant to Section 380.06, F.S.

8. Definitions contained in Chapter 380, Florida Statutes, shall control in the construction of this development order. Hawk's Cay Investors Limited, is the present owner of the property which is the subject of this ADA. Hawk's Cay Investors Limited, is bound by the terms of this development order so long as it owns such property. This development order shall be binding upon and inure to the benefit of the Applicant and its assignees or successors in interest.

9. To affect the equivalent RU-7 zoning granted in the Preliminary Major Development Approval of the Monroe County Zoning Board on December 5, 1985, and in the final Major Development granted September 24, 1986. The Monroe County Board of Commissioners will by this resolution correct as errors and omissions such SC and SR Land Use Districts so as to conform to the DR district in context of this DRI.

10. In the event that any portion or section of this development order is determined to be invalid by a court of competent jurisdiction, the remaining portions or sections of this development order shall remain in full force and effect.

11. Notice of the adoption of this resolution and a certified copy of this resolution shall be recorded by the Applicant pursuant to Section 380.06(15)(f), Florida Statutes.

12. The County shall transmit a certified copy of this development order by certified mail to the DCA, the RPC, and the Applicant.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a Special meeting of said Board held on the 5th day of December, A.D., 1986.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Jerry Herman Jr.
Mayor/Chairman

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

Dorothy L. Conally, D.C.
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY
Attorney's Office

GENERAL AND SPECIAL CONDITIONS OF DEVELOPMENT

The following are the General and Special Conditions governing the development of HAWK'S CAY RESORT:

1.0 General Conditions

1.1 The Applicant shall integrate all original and supplemental ADA information into a Consolidated Application for Development Approval (CADA) and submit two copies of the CADA to the Regional Planning Council (RPC), one copy to Monroe County, and one copy to the Florida Department of Community Affairs within thirty (30) days of the effective date of this Development Order. The CADA shall be prepared as follows:

(a) Where new, clarified, or revised information was prepared subsequent to submittal of the ADA but prior to issuance of the DO, whether in response to a formal statement of information needed or otherwise, the original pages of the ADA will be replaced with revised pages.

(b) Revised pages will have a "Page Number (R) - Date" notation, with "Page Number" being the

number of the original page, "(R)" indicating that the page was revised, and "Date" stating the date of the revision.

1.2 The CADA and the RPC DRI assessment are incorporated herein by reference and relied upon by the parties in discharging their statutory duties under Chapter 380, Florida Statutes, and local ordinances. Substantial compliance with the representations contained in the Application for Development Approval is a condition for approval unless waived or modified by agreement among the RPC, County, and Applicant, its successors, and/or assigns.

1.3 (a) This development shall be subject to further Chapter 380 review in the event significant physical development has not commenced within two (2) years from the effective date of the development order. Failure to commence significant development as required by this paragraph shall stay the effectiveness of the development order and no additional development permits shall be granted until such time as an amended ADA, providing updated

information, is submitted to the RPC, County, and Department of Community Affairs and an amended development order is issued.

(b) The termination date for completing development shall be ten (10) years from the effective date of the development order provided that the Applicant, or its successors and assigns, complies with the terms and conditions of this Development Order. This termination date may only be modified in accordance with Section 380.06(19), Florida Statutes, (1986).

1.4 The effective date of this Development Order shall be forty-five (45) days from transmittal of the Hawk's Cay Development Order to the Florida Department of Community Affairs, the RPC and the Applicant; provided, however that if the Development Order is appealed, the effective date of the Development Order shall not commence until the day after all appeals have been withdrawn or resolved pursuant to Section 380.07(2), Florida Statutes.

1.5 Within thirty (30) days of the effective date of this Development Order, notice of its adoption shall be recorded with the Clerk, Monroe County

Circuit Court, pursuant to Section 380.06(15)(f), Florida Statutes (1986).

1.6 In the event the Applicant, its successors and/or assigns violates any of the conditions of this Development Order or otherwise fails to act in substantial compliance with the Development Order, the local government shall stay the effectiveness of the Development Order as to the parcel in which the violative activity or conduct has occurred and withhold further permits, approvals, and services for development in said parcel. For purposes of this paragraph, the word "parcel" shall be defined to mean: any land area identified on the Hawk's Cay Resort Master Plan. Nothing in this paragraph shall limit the authority of the DCA under Chapter 380, F.S.

1.7 The County attorney, upon recommendation of the building official, shall have the authority to stay the effectiveness of the DRI Development Order upon notification and verification of a violation of any condition herein.

1.8 This Development Order runs with the land and is binding on the Applicant, its successors, and/or assigns, jointly or severally.

1.9 December 31, 1996 shall be the date until which the County agrees that the Hawk's Cay Resort Development of Regional Impact shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the County can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred, or that the development order was based on substantially inaccurate information provided by the Applicant, or that the change is clearly essential to the public health, safety, or welfare.

1.10 The Director of Planning, Building and Zoning is the County official designated to monitor compliance with all conditions of the Development Order including the following requirements:

(a) The Development Order conditions shall be reviewed prior to issuance of any local development permit; and

(b) for any condition that cannot reasonably be monitored as part of the local permitting and inspection processes, a notarized affidavit from the Applicant assuring compliance with such Development Order conditions shall be

included as part of the Annual Report required by this Development Order.

1.11 The Applicant shall submit an Annual Report to the RPC, County, and DCA on each anniversary of the effective date of the Development Order, which report shall include at a minimum:

(a) A complete response to each question contained in the annual status report form adopted by the Department of Community Affairs, to-wit Form BLWM-07-85, as amended.

(b) Identification and description of any changes in the plan of development, or in the representations contained in the ADA, or in the phasing for the reporting year and for the next year.

(c) A summary comparison of development activity proposed and actually conducted for the year.

(d) Identification of undeveloped tracts of land, other than individual single family lots, that have been sold to a separate entity or developer.

(e) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the project site since the Development Order was issued.

(f) An assessment of the Applicant's and the local government's compliance with the conditions contained in the DRI Development Order and the commitments which are contained in the ADA.

(g) Specification of any amended DRI ADA or requests for a substantial deviation determination that were filed in the reporting year or to be filed during the next year.

(h) An indication of change, if any, in local government jurisdiction for any portion of the development since issuance of the Development Order.

(i) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number, and purpose of each.

(j) A statement that all persons have been sent copies of the annual report in conformance with Subsection 380.06(15) and (18), Florida Statutes.

(k) A copy of any recorded notice of the adoption of the Development Order of any subsequent modification that was recorded by the Applicant pursuant to Subsection 380.06(15)(f), Florida Statutes.

(l) Copies of all affidavits submitted to the County pursuant to Condition 1.10(b) herein.

(m) Any other information required by the Department of Community Affairs in accordance with Section 380.06(15) and (18), Florida Statutes (1986).

(n) The County Director of Planning, Building and Zoning is designated as the local official responsible for receiving the annual report.

1.12 The land uses approved by this Development Order shall be as shown on the Master Development Plan attached hereto as Exhibit 1 and as fully described in answer to question `12 of the ADA which is attached hereto as Exhibit 2. Both of these exhibits are incorporated into this Development Order. Table 12.1 of Exhibit 2 is modified herein to differentiate between existing development and development authorized by this development order and to advance the construction beginning and ending dates by one year to account for delays in securing DRI approval.

1.13 Except for development authorized by the Section 380.06(8), F.S., preliminary development agreement for Hawk's Cay Resort dated May 15, 1986, Chapter 12 of the Monroe County Comprehensive Plan, Volume

III, "Land Development Regulations", effective September 15, 1986, as amended from time to time, relating to Impact Fees, shall be applicable to this development so long as said fees are also applicable to all other similar types (Hotel/Motel) of development within Monroe County.

2.0 Stormwater Management

2.1 The Applicant shall design, construct, and maintain the stormwater management system to meet the following standards:

a. Retain the first flush (at least the first one-half inch) of project runoff in vegetated retention areas.

b. These vegetated retention areas are to be constructed so that they allow the retained stormwater to infiltrate in less than 24 hours.

c. Limit application of pesticides and fertilizers in vegetated retention areas to twice per year for preventive maintenance and to emergencies, such as uncontrolled insect infestation.

4.2 The Applicant shall construct all development so that it is in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

5.0 Archaelogical Sites

5.1 The Applicant shall notify State archaeological officials of construction schedules, and delay construction up to three months in any area where potentially significant historic or archaeological artifacts are uncovered, and permit State and local historic preservation officials to survey and excavate the site.

6.0 Vegetation

6.1 The Applicant shall remove all invasive exotic plants from the project site as the site is cleared, use only those plant species identified in Exhibit 2 of the RPC DRI assessment or other species approved for use by SFRPC in project landscaping.

7.0 Transportation

7.1 Within six months following the completion of Phase 2 of the development as defined in this report, the Applicant shall consult with the Florida Department of Transportation (FDOT) to determine the need for a traffic signal at the intersection of US 1 and

Duck Key Drive. The Applicant shall repeat this after each subsequent phase and following project buildout or until a traffic signal is installed at this location. Copies of all correspondence and reports relating to such consultation shall be provided to the Board, the RPC, and the DCA. If and when a traffic signal at this location is found to be necessary by the FDOT, the Applicant shall provide full funding for its installation to the Florida Department of Transportation. If the Applicant fails to consult or provide such funding as required by this paragraph in a timely fashion, the County may withhold issuance of certificates of occupancy until the Applicant has conformed with provisions of this paragraph.

8.0 Employee Housing

8.1 Beginning with the commencement of the construction authorized herein, the applicant shall provide daily employee transportation to and from the Marathon area. The applicant shall also contribute $5,000 to an entity acceptable to the County which develops or otherwise provides affordable employee housing in the Marathon/Hawk's Cay Resort area.

Exhibit #2

QUESTION 12. General Project Description

A. Provide a brief summary of the major elements of the proposed development. Include all existing and proposed land uses ancillary to the project (e.g. a neighborhood shopping center in a residential DRI).

The Hawk's Cay Resort is a luxury destination resort located on Indies Island at Duck Key, Monroe County, Florida. The Hawk's Cay Resort consists of 60.8 acres with 178 existing hotel rooms, three restaurants, a night club, conference facilities, tennis courts, swimming pool and beach, convenience store, and marina. The resort was recently renovated to become a first class tourist facility.

The proposed project is designed to expand the existing resort to make Hawk's Cay a world class destination conference center and resort. Hawk's Cay will then become the first tourist facility capable of bringing large conventions to the Florida Keys.

The development plan provides for the addition of 444 hotel rooms and suites under a phased development schedule which will result in a completed resort of 622 rooms and suites. In addition to adding rooms, the development plan provides for new conference facilities, retail areas, a restaurant, a professional tennis center, and full landscaping for the entire property. The proposed project uses native vegetation in a lush pattern with low density, clustered buildings, to result in an environmentally sound and aesthetically pleasing design, as follows:

Total Upland Area	60.8 acres
Structures, walks, decks, plazas	8.5 acres
Driveways, parking and tennis	14.3 acres
Pools	.2 acres
Landscaped open space	37.8 acres

The intent of the development plan is to provide a low rise, low density, clustered hotel and convention facility sensitive to the Florida Keys' unique environmental conditions and responsive to the goals and objectives of the proposed land use plan. The development plan was designed to have the least possible adverse impact upon the site environment and public facilities while producing the greatest possible economic benefits to the developer and Monroe County.

The expansion of Hawk's Cay is designed to be constructed in five phases. The first phase consists of construction of the North Harbor Guest Suites (see Map H2). A Preliminary Development Agreement was executed with the Florida Department of Community Affairs, pursuant to Chapter 380.06(8), Florida Statutes, that allows Hawk's Cay Investors Limited to proceed with the first phase before issuance of final development approval, which is subject to the DRI process and requires action by the Monroe County Commission. Therefore, the first phase is planned to begin immediately upon final major development approval from the Monroe County Zoning Board, which is expected in September, 1986. Any further construction must await action on this application by the South Florida Regional Planning Council and Monroe County Commission.

Additional phases, as described in Tables 12.1 and 12.2, will provide -

- additional hotel rooms and suites distributed around the property and associated with different features and amenities;

- 26,000 square feet of new conference facilities, providing meeting space for the resort's guests, which will not cause additional outside traffic to Hawk's Cay;
- a small area (3000 square feet) of additional retail space, clustered near the entrance road from U.S. Highway 1, for accessory retail uses normally found in luxury resorts such as men's and women's clothing, drug stores, swimwear, etc.; and
- extensive landscaping to produce a garden environment that preserves existing and introduces additional native species of vegetation.

B. Complete Tables 12.1 and 12.2. (If the development has a proposed buildout of 10 years or less, show development in the first five years and subsequently. If the proposed buildout is greater than 10 years, show by 5-year increments.)

TABLE 12.1: PHASING OF DEVELOPMENT (MODIFIED)

Phase	Hotel & Motel Rooms	Suites	Commercial Sq. Ft.	Construction Beginning	End
Existing	156	22	3000		
1	-	84	-	1987	1988
2	54	6	-	1988	1990
3	156	-	3000	1990	1992
4	38	10	-	1992	1994
5	76	20	-	1994	1996
TOTAL	480	142	6000	1987	1996

Note: Specific project details are estimated here for planning purposes only, as future market circumstances may necessitate modification of construction beginning and ending dates, and numbers of units; however, in no case will the numbers of units specified be changed significantly [as per Ch. 380.06(19)(b)(11), F.S.] without additional review and approval.

TABLE 12.2: EXISTING AND PROPOSED LAND USES

Code	Land Use		Existing	Phases 1	2	3	4	5	TOTAL
121	Retail Sales & Services								
		acres	2.90	-	-	2.80	-	-	5.70
		% of site	4.20	-	-	4.06	-	-	8.26
124	Hotels & Motels								
		acres	56.19*	-	-	-	-	-	53.39
		% of site	81.43	-	-	-	-	-	77.37
126	Oil & Gas Storage Facilities -	acres	0.01	-	-	-	-	-	0.01
		% of site	0.01	-	-	-	-	-	0.01
155	Sewage Treatment Facilities -	acres	1.70	-	-	-	-	-	1.70
		% of site	2.46	-	-	-	-	-	2.46
Subtotal			60.80	-	-	-	-	-	60.80
563	Other Water Areas (submerged land)								
		acres	8.2	-	-	-	-	-	8.2
		% of site	11.9	-	-	-	-	-	11.9
TOTAL		acres	69.0*	-	-	2.80	-	-	69.0
		% of site	100.0	-	-	4.06	-	-	100.0

* Abandonment procedures for a total of 3.4 acres of existing County roadway on Indies Island will be initiated at the outset of each development phase (see answer to Question 12.C.).

Note: All land uses are accessory to hotel/motel, as part of a full service resort complex. See Table 12.1 and Map H2 for greater detail. Values given on this table are best estimates for planning purposes, and it is recognized that changes may be necessary to respond to real market circumstances at the time. In no case will the number of hotel/motel units specified in Table 12.1 be changed significantly [as per Ch. 380.06(19)(b)(11), F.S.] without additional review and approval.

d. Consult with and conform to the requirements of all applicable State and local agencies when expanding the project's drainage system and installing disposal wells.

e. If the proposed drainage system is revised during permitting, submit the revised drainage plan to SFWMD and SFRPC for review and approval.

3.0 Wastewater Treatment

3.1 The Applicant shall consult with and conform to the requirements of all applicable State and local agencies when expanding the project's wastewater treatment facilities.

3.2 The Applicant shall utilize treated wastewater effluent for project irrigation to reduce the project's demand on fresh water supplies.

4.0 Housing/Energy

4.1 In final design and construction of the project, the Applicant shall use minimum elevations for floors, roadways, and parking areas that are consistent with South Florida Water Management District and Monroe County criteria.

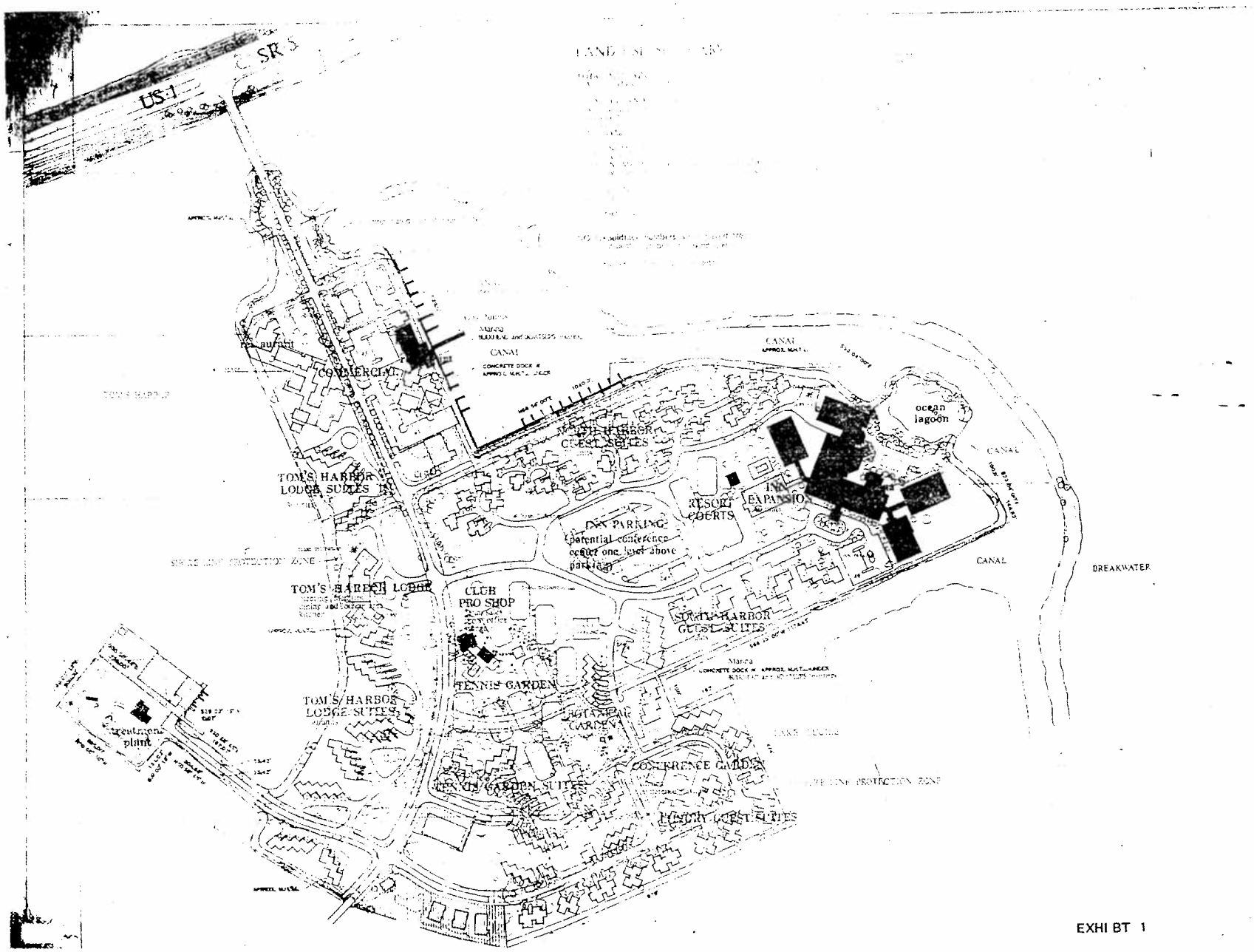


EXHIBIT 1

Sheet

Williams Co., Architects
Mosley Cummings, Inc., Planners

MASTER DEVELOPMENT PLAN
HAWK'S CAY EXPANSION DEVELOPMENT OF REGIONAL IMPACT

Hawk's Cay Investors Limited, a Florida Limited Partnership by
Hawk's Cay Management Inc., a Florida Corporation, General Partner
Hampton Beach, Florida

Resort Expansion at
Hawk's Cay

Planning Department

RESOLUTION NO. 335A-1996

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, APPROVING AMENDMENTS TO THE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER, RESOLUTION NO. 365-1986, AND MODIFICATIONS TO THE MAJOR DEVELOPMENT APPROVAL FOR THE HAWK'S CAY EXPANSION DRI; PROVIDING AN EFFECTIVE DATE.

FILED FOR RECORD
'96 SEP 18 A9:58

WHEREAS, on December 5, 1986, after a public hearing, the Monroe County Board of County Commissioners, (Board) adopted Resolution No. 365-1986, a Development Order issued under Chapter 380, Florida Statutes, F.S., for a Development of Regional Impact (DRI) known as the Hawk's Cay Expansion DRI; and

WHEREAS, on September 24, 1986, the Monroe County Zoning Board recommended that the Board approve the amendments to the DRI and Major Development for the Hawk's Cay Resort; and

WHEREAS, on June 6, 1995, Hawk's Cay Investors, Limited, and Hawk's Cay Developers, Limited, the owner and developer (hereinafter Applicant), proposed changes to the 1986 DRI Development Order by filing a Notification of Proposed Change (hereinafter Notification) to a Previously Approved DRI with Monroe County, the South Florida Regional Planning Council, and the Department of Community Affairs in accordance with Section 380.06(19)(f), F.S.; and

WHEREAS, on March 6 and August 20, 1996, the Applicant submitted revisions to the proposed DRI changes in the pending Notification; and

WHEREAS, on August 10, 1995, Hawk's Cay Investors, Limited, also filed an application for modifications to the 1986 Major Development approval (hereinafter modifications), which was further revised by the Applicant by supplemental information submitted December 12, 1995, May 29, 1996, and July 26, 1996; and

WHEREAS, the DRI Notification proposes to revise the DRI master plan for the DRI as approved in Resolution No. 365-1986 and extend the buildout and termination date of the DRI pursuant to Section 380.06(19)(c), F.S. (1995); and

WHEREAS, the Planning and Environmental Resources Departments have reviewed the proposed amendments to the DRI and modifications of the Major Development and recommended approval with conditions of the concept site plan and recommended denial of the request for time extension of the project, as presented in staff report dated July 8, 1996, and updated on September 3, 1996; and

WHEREAS, during the review process, the Monroe County Planning Commission, after due notice and public participation in the hearing process, has reviewed the proposed amendments and modifications to the DRI and Major Development and recommendations of the Planning and Environmental Resources Departments; and

WHEREAS, the Planning Commission at its meeting of September 5, 1996, made findings of fact and conclusions of law that recommended approval of the modifications to the Major Development/DRI and extension of the project termination date from January 25, 1997, to January 20, 2004; and

WHEREAS, on September 5, 1996, the Planning Commission granted a variance to the Applicant in meeting the minimum sideyard setback requirements of Section 19-79 of the Monroe County Code in effect prior to September 16, 1986; and

WHEREAS, the Monroe County Board of County Commissioners (Board) is the local government body having jurisdiction over the review and approval of the DRI, in accordance with Section 380.06, F.S. (1995); and

WHEREAS, the public notice requirements of Monroe County and Section 380.06(19)(f)3, F.S. (1995), for consideration of the proposed changes have been met; and

WHEREAS, on September 18, 1996, the Board held a duly noticed public hearing on the DRI Notification and has heard and considered the testimony and documents received therein; and

WHEREAS, the public was afforded an opportunity to participate in the public hearing and all parties were afforded the opportunity to present evidence and argument on all issues and submit rebuttal evidence on the subject Notification before the Board; and

WHEREAS, the Board has reviewed the above referenced documents, the related recommendations of the Monroe County Planning Commission dated September 5, 1996, as well as all related testimony and evidence submitted by the parties and members of the general public; and

WHEREAS, Board of County Commissioners has duly considered the findings of fact and conclusions of law contained in Planning Commission Resolution dated September 5, 1996, and adopts these findings of fact and conclusions of law as its own; and

WHEREAS, there was competent substantial evidence presented that the changes set forth in the proposal do not meet or exceed any of the DRI substantial deviation criteria in Section 380.06(19), F.S. (1995);

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

Section 1. The changes proposed by the Applicant in its DRI notification do not constitute a deviation pursuant to Section 380.06(19), F.S. (1995).

Section 2. Resolution No. 365-1986, the 1986 DRI Development Order for the Hawk's Cay Expansion DRI, shall be further amended as follows:

(New Language is underlined; deleted language is ~~stricken~~ through)

Amendments to Resolution No. 365-1986

1. Revise the third "WHEREAS" clause as follows:

WHEREAS, Hawk's Cay Resort ~~as proposed in the ADA~~ when completed will be a hotel type destination resort consisting of ~~622~~ 447 hotel suites, conference facilities, retail areas, restaurants and recreational facilities on approximately ~~61~~ 58.8 acres of land located in unincorporated Monroe County, Florida on Indies Islands at Duck Key, and;

Amendments to Attachment A, General and Special Conditions of Development

2. Revise Condition 1.3(b) as follows:

The Project buildout, DRI termination and DRI development order expiration date for completing development shall be ~~ten (10) years from the effective date of the development order~~ January 20, 2004, provided

that the Applicant, or its successors and assigns, complies with the terms and conditions of this Development Order. ~~This~~ These termination dates may only be modified in accordance with Section 380.06(19), Florida Statutes, ~~(1986)~~ (1995). Consistent with prior County Determinations concerning the original buildout date, these dates also shall govern the related Hawk's Cay Major Development Approval.

3. Revise Condition 1.7 as follows:

The County Attorney, upon recommendation of the ~~building official~~ Director of Planning, shall have the authority to stay the effectiveness of the DRI Development Order upon notification and verification of a violation of any condition herein.

4. Revise Condition 1.9 as follows:

~~December 31, 1986~~, January 20, 2004, shall be the date until which the County agrees that the Hawk's Cay Resort Development of Regional Impact and Major Development shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the County can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred, or that the development order was based on substantially inaccurate information provided by the Applicant, or that the change is clearly essential to the public health, safety, or welfare.

5. Revise Condition 1.10, first line, as follows:

The Director of Planning, ~~Building and Zoning~~ is the county official designated to monitor compliance with all conditions of the Development Order including the following requirements:

- - -

(No additional changes to Condition 1.10)

6. Revise Condition 1.11, first line, and delete subsection (n) as follows:

The Applicant shall submit an Annual report to the RPC, County Director of Planning, and DCA on each anniversary of the effective date of the Development Order, which report shall include at a minimum:

- - -

~~(n) The County Director of Planning, Building and Zoning is designated as the local official responsible for receiving the annual report~~.

7. Substitute Revised Master Development Plan dated May 20, 1996, for the original Master Development Plan attached to the Development Order as Exhibit 1 and referenced in Condition 1.12.

8. Revise Condition 1.12 as follows:

The land uses approved by this Development Order shall be as shown on the Master Development Plan attached hereto as Exhibit 1. ~~and as fully described in answer to question 12 of the ADA which is attached hereto as Exhibit 2.~~ Both of these exhibits are incorporated into this Development Order; provided, however, that the "Land Use Summary" on the Master Development Plan shall control as to the amount and type of approved development. ~~Table 12.1 of Exhibit 2 is modified herein to differentiate between existing development and development authorized by the development order and to advance the construction beginning and ending dated by one year to account for delays in securing DRI approval.~~

9. Revise Condition 7.1 as follows:

Within six months following the completion of 144 new hotel units ~~Phase 2~~ of the development as defined in this report, the Applicant shall consult with the Florida Department of Transportation (FDOT) to determine the need for a traffic signal at the intersection of US 1 and Duck Key Drive. The Applicant shall repeat this after each additional 50 units ~~subsequent phase~~ and following project buildout or until a traffic signal is installed at this location. Copies of all correspondence and reports relating to such consultation shall be provided to the Board, the RPC , and the DCA. If and when a traffic signal at this location is found to be necessary by the FDOT, the Applicant shall provide full funding for its installation to the Florida Department of Transportation. If the Applicant fails to consult or provide such funding as required by this paragraph in a timely fashion, the County may withhold issuance of certificates of occupancy until the Applicant has conformed with provisions of this paragraph.

10. Add New Special Conditions in Sections 9, 10, 11, and 12 as follows:

9.0 Site Planning for 1996 DRI Amendments

9.1 The Applicant shall adhere to the following general site planning requirements for future development following approval of the 1996 amendments to the DRI Development

Order proposed by Applicant and extension of this Development Order to January 20, 2004.

a. The Applicant may construct a maximum of 269 guest units, consisting of 25 large suites (3-bedroom, 3-bath) and 244 suites (2-bedroom, 2-bath). Twenty-two of the suites are existing. These numbers exclude the additional 178 existing hotel units that were not subject to DRI review.

b. The Applicant may construct a maximum of 10,000 square feet of additional commercial space at the existing resort hotel complex.

c. The Applicant may construct a maximum of 15,000 square feet of additional convention space at the existing resort hotel complex.

d. The maximum height of any newly constructed units and commercial or conference structures shall be 35 feet.

e. The Applicant proposes to re-configure the roads within the DRI as shown on the Revised Master Development Plan.

f. The Applicant shall provide a boat trailer/RV parking area that cannot be seen from Duck Key Drive.

g. All new guest units shall be constructed within the "development corridors" identified in Exhibit 1. The following minimum setbacks shall be met:

Setback from mean high water: 20 feet
Setback from property line adjacent to Duck Key Drive: 50 feet.

h. All new guest units constructed shall adhere to one of the architectural styles and one of the representative floor plans depicted in Attachment G2 to the "Hawk's Cay Expansion Project Community Impact Statement update May 20, 1996."

i. Prior to the issuance of a building permit, the Applicant shall obtain a variance to the minimum side yard requirements.

j. Prior to the issuance of any building permit for hotel units within a development corridor, the Applicant shall submit, and the Planning Director shall approve, a site plan for that portion of the development corridor for which building permits are being requested indicating the location of the buildings, the parking and the landscaping. Parking shall be at the minimum ratio of 1.29 spaces per unit. Landscaping on the Master Plan (Exhibit 1) shall be in compliance with Section 19-127(b)(1), (b)(2) and (b)(3) of the pre-1986 Monroe County Code, as determined by the Planning Director.

k. Landscaping for parking areas on the Master Development Plan shall be in compliance with Section 19-127(b)(1), (b)(2), and (b)(3) of the pre-1986 Monroe County Code, as determined by the Planning Director. This landscaping shall be provided in accordance with the following schedule:

i. Prior to the issuance of a certificate of occupancy for expansion of development within the "Commercial Expansion Area," the Applicant shall provide landscaping for the common parking area.

ii. Prior to the issuance of certificate of occupancy for expansion of the "Conference Center/Ballroom," the Applicant shall provided landscaping for the "Inn Overflow Parking Area."

iii. Prior to the issuance of a certificate of occupancy for the 101st unit within the development corridors, the Applicant shall provide landscaping for all of the common parking areas, including the "Commercial Expansion Area" and the proposed "Overflow Parking" areas.

l. All the proposed construction and site development shall comply with the Florida Accessibility Code for Building Construction or the applicable regulations which are in effect at the time of the building permit application. Accessible units in the development corridors shall be developed at the required rates for each element of accessibility.

9.2 After receipt of final uncontested building permits for the units authorized under the 1996 amendments to this DRI Development Order and after the County's extension of the Development Order to January 20, 2004, the Applicant shall comply with the following additional conditions:

a. The Applicant will provide a long-term lease (20 years renewable for another 20 years at a cost of $1.00 per year) for a 100' X 100' piece of property located at the corner of Duck Key Drive and Greenbriar Road for the installation of a Duck Key "welcome booth." The Applicant will permit "hookup" of sanitation and electricity at said welcome booth. The Applicant will allow a road turn around.

b. The Applicant will reconfigure the boat launch ramp to eliminate the use of Duck Key Drive as a direct launch ingress and egress, as conceptually illustrated on Exhibit 2 attached hereto.

c. The Applicant will landscape the east and west sides of Duck Key Drive. Landscaping will meet or exceed Monroe County standards in effect at the permit date.

d. The Applicant will adopt and enforce to the best of its ability, the jet ski restrictions listed in Exhibit 3 attached hereto.

e. The Applicant will use its best efforts to obtain approval to install and operate a welcome booth on Duck Key Drive at the main entrance to Hawk's Cay, as conceptually illustrated on Exhibit 1 hereto, for purposes of providing:

i. Bridge safety information for pedestrians and motorists.

ii. Traffic information and guidance for visitors and guests to the DRI and neighboring Duck Key residences.

iii. Station for DRI security personnel.

A pass-through lane for public access will be provided. DKPOA has agreed with the Applicant that it will assist Hawk's Cay Resort in this effort if it is determined by DKPOA and the Duck Key Security District Advisory Board that this approach will significantly improve public safety and the security of the residential islands.

Any financial support from the residential islands for the operation of the welcome booth must be approved by the Duck Key Security Advisory Board under the guidelines established by Monroe County.

f. There will be no boat dockage allowed at units on the south side of Greenbriar Road or the west side of Duck Key Drive.

g. Assuming approval of the 1996 DRI Development Order amendments and extension of the DRI Development Order to January 20, 2004, the deteriorating seawall bordering the Lake Lucille and canal area will be repaired within two years of the commencement of construction of new guest units adjacent to the seawall.

h. Construction of each building will be completed within 18 months of ground breaking.

i. DKPOA will be provided copies of all permit applications made by the Applicant to county, state and federal agencies.

j. The following limitations on the buildings in the "development corridors" shall be mandatory:

i. The maximum number of hotel units per building shall be seven.

ii. No more then 90 hotel units shall be developed in Development Corridor #2 shown on Exhibit 1.

iii. Hotel buildings in Development Corridor #2 shall utilize no more than two-thirds of the linear shoreline frontage.

10. Use of Duck Key Drive Right-of-Way. The Applicant, at its sole expense, shall be responsible for obtaining County and any other necessary permits and approvals to use the existing unpaved right-of-way for Duck Key Drive for landscaping, street lighting, underground utility locations or relocation, Hawk's Cay-related signage, and other similar uses.

11. Welcome Booth/Security Station. The Applicant, at its sole expense, shall be responsible for obtaining County and any other necessary permits and approvals to use the existing unpaved right-of-way for Duck Key Drive for a welcome and information booth/security station for the Hawk's Cay project as conceptually depicted on Exhibit 1. Provided, however, that the Applicant shall not erect any gating or other security device across Duck Key Drive or require vehicular or pedestrian traffic to stop at such booth/station. In addition, the Applicant, at all times, shall ensure that there is a through traffic lane available on Duck Key Drive.

12. Sewage Treatment Facility. At the County's option, the Applicant shall enter into an Agreement concerning the final disposition of land, wastewater treatment and reuse facilities, and other appurtenances on Utility Island within one year of the adoption of the Monroe County Sanitary Wastewater Management Plan by the Board of County Commissioners. The Agreement shall detail the terms and conditions of the transfer of ownership by the Applicant to the County, at no capital cost to the County, of all land, wastewater treatment and reuse facilities, and other appurtenances on Utility Island for the siting and construction of a subregional wastewater management facility by the County. The Applicant shall have the right to use all reuse water available from the new subregional facility. Applicant shall be permitted to retain a solid waste holding area.

Section 3. The Major Development modifications, including the revised final site development plan, as submitted by the Applicant are also approved.

Section 4. Those provisions of the DRI Development Order, Resolution No. 365-1986, and the Major Development approval which are not further amended by this Resolution shall remain in full force and effect.

Section 5. A certified copy of this Resolution, with all exhibits, shall be furnished by the County by certified mail, return receipt requested, to the Applicant, the Florida Department of Community Affairs and the South Florida Regional Planning Council within 10 days of its adoption by the Board.

Section 6. The Applicant shall record a notice of this Resolution pursuant to Section 380.06(15), F.S. (1995).

Section 7. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of the Board held on this 18th day of September, A.D., 1996.

Mayor Freeman	Yes
Mayor Pro Tem London	Absent
Commissioner Harvey	Absent
Commissioner Douglas	Yes
Commissioner Reich	Yes

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Shirley Freeman
MAYOR/CHAIRMAN

(SEAL)
ATTEST; DANNY L. KOLHAGE, CLERK

By: Ruth Ann Jantzen
DEPUTY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY
Attorney's Office

RESORT EXPANSION AT

EXHIBIT ONE

Hawk's Cay

REVISED MAY 30, 1986

MASTER DEVELOPMENT PLAN
ATTACHMENT #
SITE PLAN & CONCEPTUAL DRAINAGE PLAN

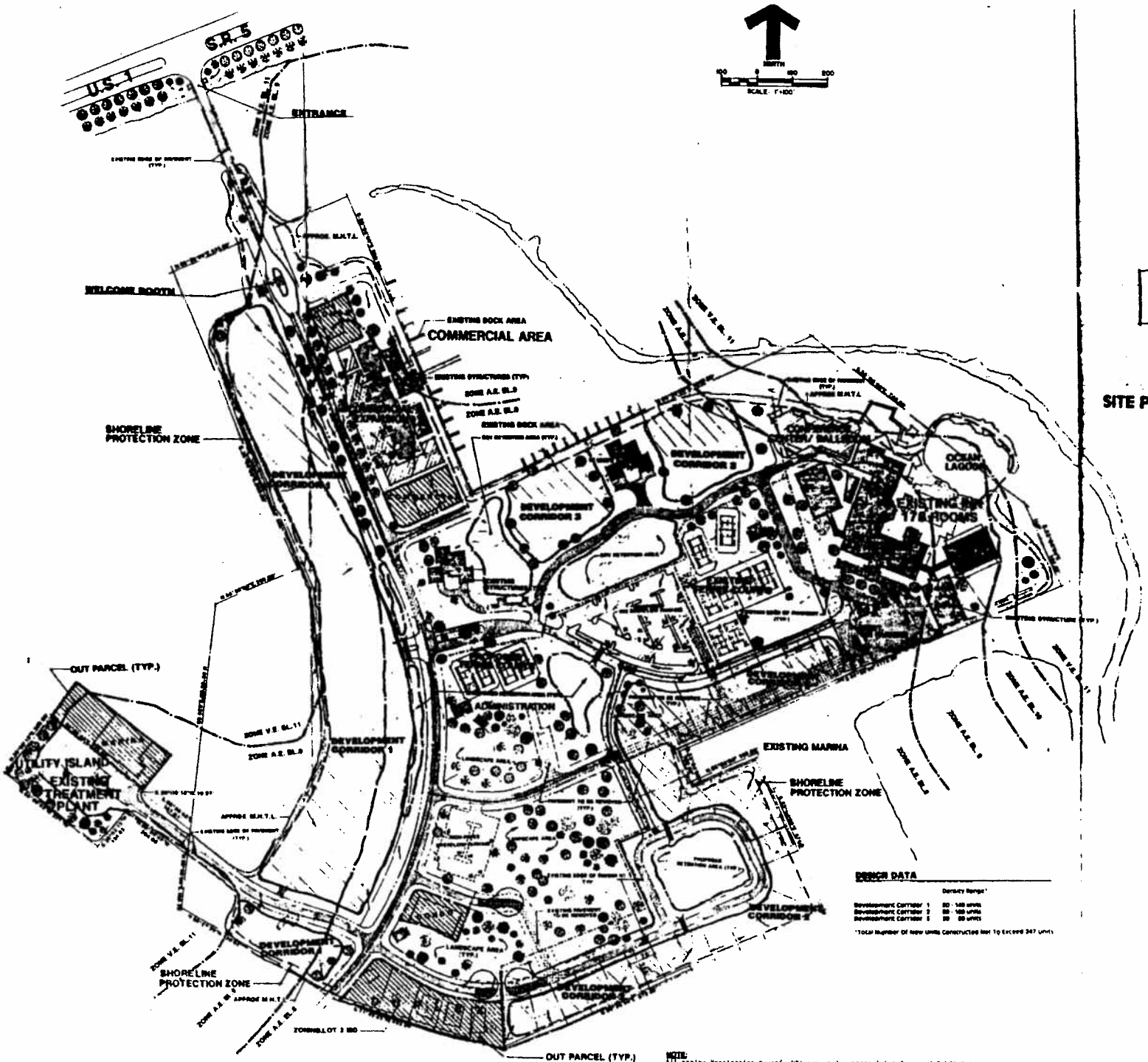
PREPARED FOR
HAWK'S CAY INVESTORS LIMITED,
A FLORIDA LIMITED PARTNERSHIP

PREPARED BY
HAWK'S CAY MANAGEMENT, INC.
A FLORIDA CORPORATION, GENERAL PARTNER
POMPANO BEACH, FLORIDA

PREPARED BY
H·J· ROSS ASSOCIATES, INC.
3770 S.W. 8TH STREET, SUITE 200
CORAL GABLES, FLORIDA 33134

MAY 30, 1986

[illegible]



DESIGN DATA

	Density Range*
Development Corridor 1	80 - 140 units
Development Corridor 2	80 - 160 units
Development Corridor 3	80 - 80 units

*Total Number Of New Units Constructed Not To Exceed 347 Units

LAND USE SUMMARY

LAND USE	ACRES	PERCENT
TOTAL SITE AREA	[illegible]	
Area in submerged lands	[illegible]	
TOTAL UPLAND SITE AREA	[illegible]	[illegible]
Developed Area	[illegible]	[illegible]
Area in Undeveloped Open Space	[illegible]	[illegible]
TOTAL NUMBER OF UNITS		
Existing units	176 units	
Proposed units (2) (construction)	[illegible] units	
TOTAL	[illegible] units	
SITE DENSITY		
Upland area	[illegible] units/ac	
NUMBER OF PARKING SPACES		
Parking area spaces	[illegible] spaces	
Number of non-paved spaces	[illegible] spaces	
TOTAL	[illegible] spaces	

LEGEND

SYMBOL	DESCRIPTION
	PROPOSED STRUCTURE
	LANDSCAPE AREA
	EXISTING TREE/PLANT
X X	SIDE WALK
	EXISTING STRUCTURE
	PROPOSED PARKING
	PROPOSED SIDEWALK
	PAVEMENT TO BE REMOVED
	DIRECTION OF SURVEY
	EXISTING CONTOURS
	APPROXIMATE MEAN SHORELINE
	DEMOLITION CALLOUT

NOTE:
All zoning Destination Report (DR) except 1 (separcel for Improved Subdivision Duplex ISD labeled. Proposed Retention Areas are approximate. See Drainage [illegible]

EXHIBIT 2

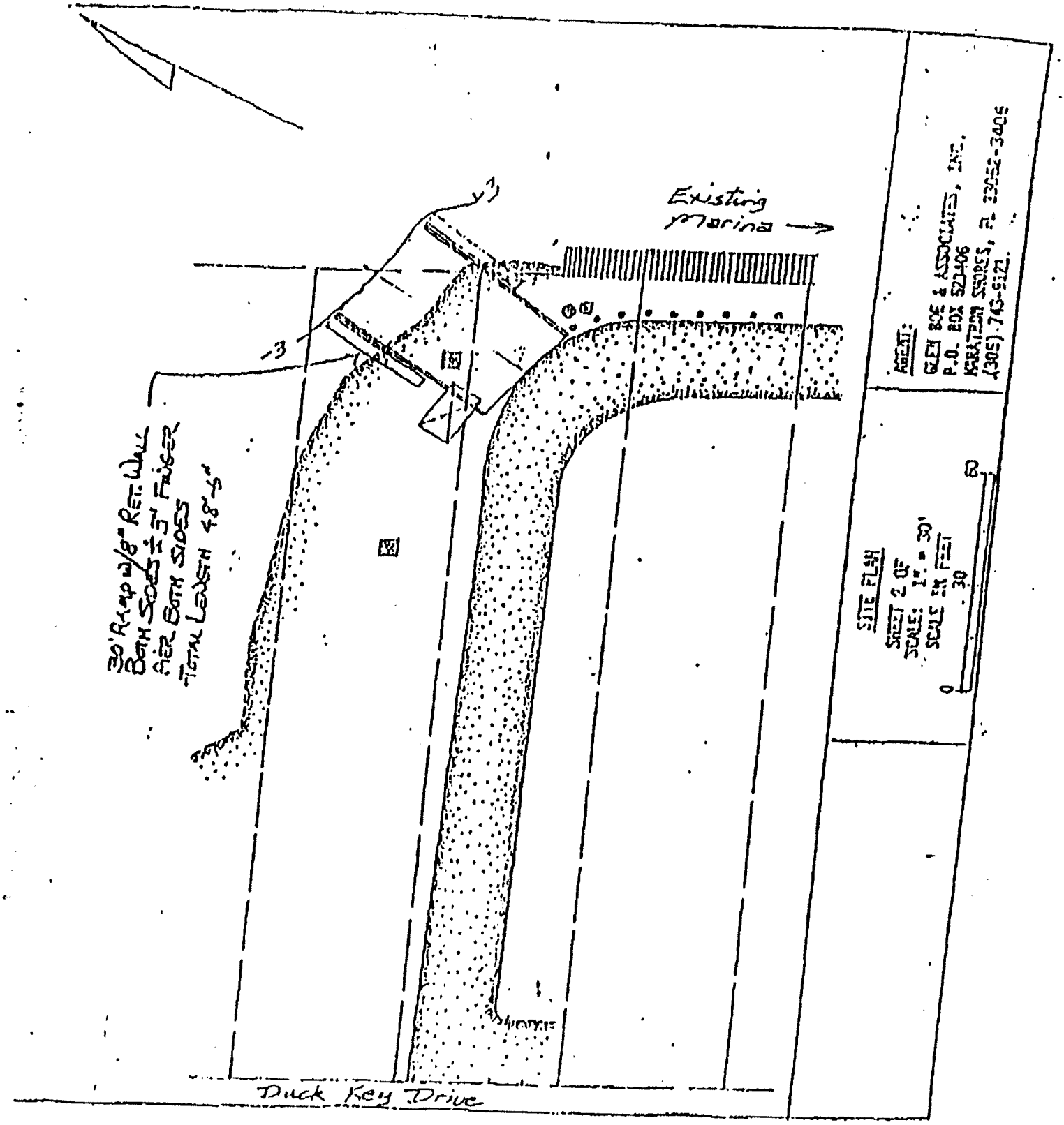

Existing Marina
30' Ramp w/8' Ret. Wall
Both Sides & 3' Finger
Per Both Sides
Total Length 48'-6"
Duck Key Drive
AGENT:
GLEN BOE & ASSOCIATES, INC.
P.O. BOX 522406
MARATHON SHORES, FL 33052-3406
(305) 743-5121
SITE PLAN
SHEET 2 OF
SCALE: 1" = 30'
SCALE IN FEET
0
30

EXHIBIT 3

Personal Watercraft Rules

1. Any new development will stipulate to rules and regulations on personal watercraft use, designating access routes similar to what is presently being done by Club Nautico of Hawk's Cay. Rules and regulations will be issued to guests and owners of any new units.

   a. Area by Tom's Harbor Island, canals and waters near residential areas, including nearshore area of the western shoreline of Hawk's Cay, to be off limits to personal watercraft. Idle speed (no to exceed 5 miles per hour) to be maintained if using gas dock at Duck Key Marina.

   b. Reckless behavior and failure to adhere to rules will result in the loss of the right to use parking and ramp facilities of Hawk's Cay for personal watercraft.

   c. Operator will provide evidence of insurance to Management or Hotel Office at the time of issuance of a ramp permit.

   d. Personal watercraft will be used during specified daylight hours (8 am to 6 pm) and in specified areas (north of US 1 or within present Club Nautico's navigation limits).

   e. The operator of a personal watercraft will be at least 18 years of age.

   f. The operator must be sufficiently skill to safety operate the watercraft.

   g. The operator will at no time be under the influence of alcohol or drugs.

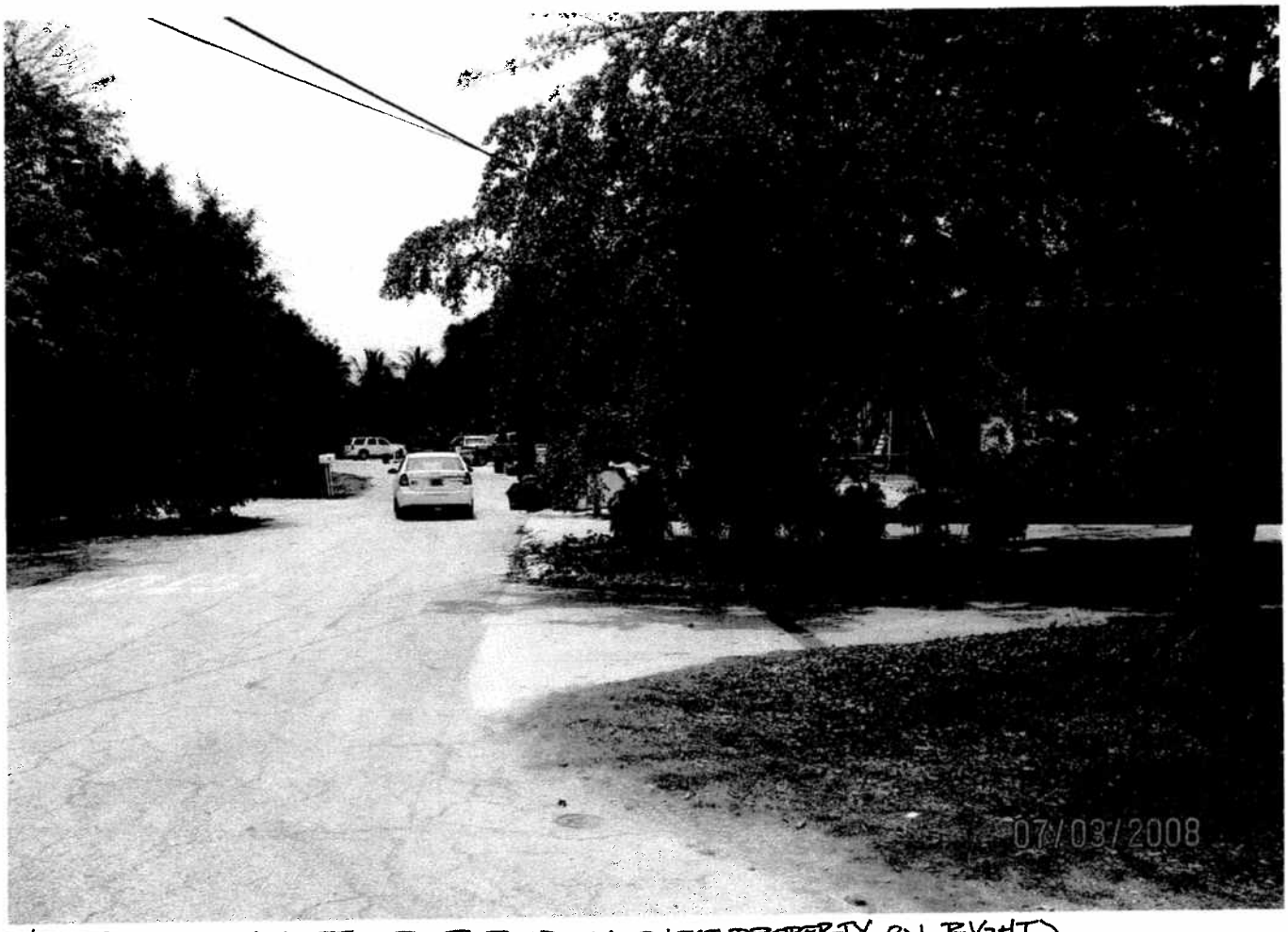
   h. Idle speed will be observed upon leaving and entering the boat ramp area and in no wake zone areas such as fuel docks.

   i. Operators and passengers will wear personal floatation devices while operating their personal watercraft.

1
2
3

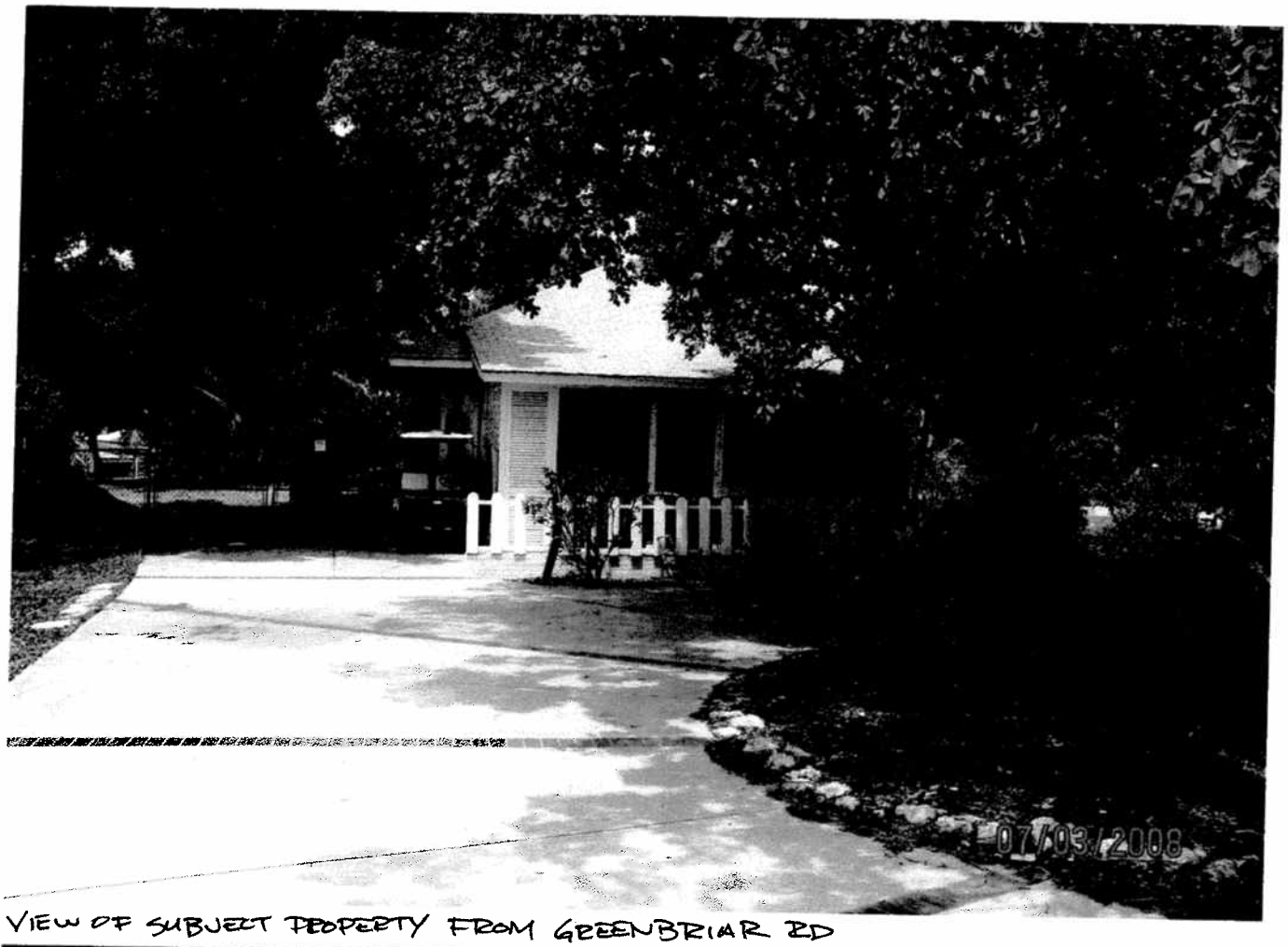
Attachment C:
2008 Photographs of the Subject Property
(by Planning & Environmental Resources Staff)

Reviewed by L.

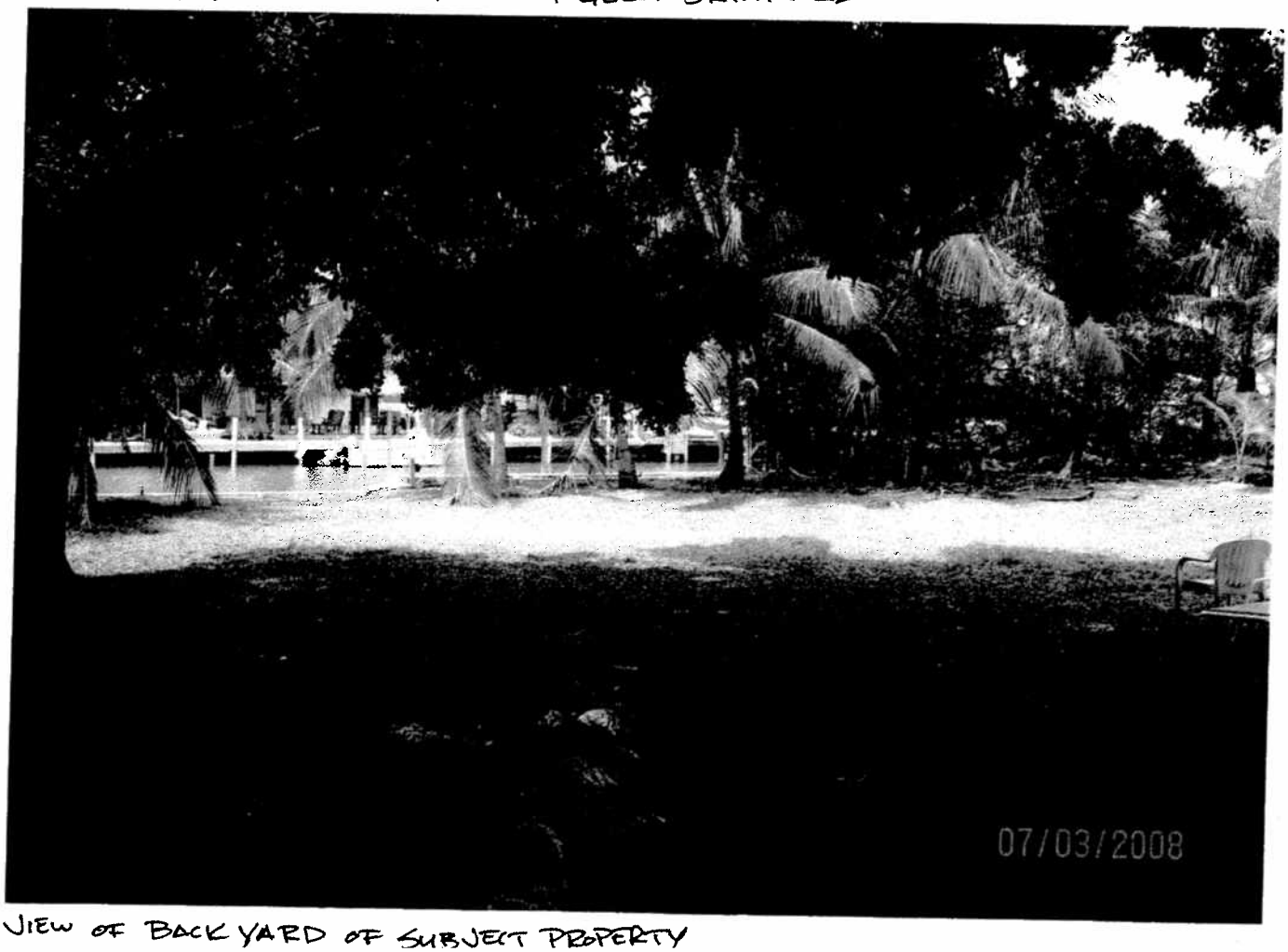


VIEW EAST DOWN GREENBRIAR ROAD (SUBJECT PROPERTY ON RIGHT)

VIEW OF SUBJECT PROPERTY FROM INTERSECTION OF GREENBRIAR RD & DUCK KEY DR



VIEW OF SUBJECT PROPERTY FROM GREENBRIAR RD



VIEW OF BACK YARD OF SUBJECT PROPERTY

VIEW SOUTHWEST DOWN DUCK KEY RD / BIMINI DR (SUBJECT PROPERTY ON LEFT)