

RESOLUTION NUMBER Z-99-045

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

WHEREAS, Tranquility Bay Development, Inc., filed an application to rezone a 73.96± acre parcel from Agricultural (AG-2) and Residential Single-family (RS-1) to Residential Planned Development (RPD), in reference to Tranquility Bay Fly-in Community; and

WHEREAS, Tranquility Bay Development, Inc., c/o Craig Bloxham, the owner of the subject parcel, authorized Carl A. Barraco, P.E., Steven C. Hartsell, Esquire and Ken Passarella, to act as agents to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on July 1, 1999, before the Lee County Hearing Examiner who gave full consideration to the evidence in the record for Case # 98-01-095.03Z 01.01; and

WHEREAS, a second public hearing was advertised and held on October 18, 1999, 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 the 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 73.96± acre parcel from AG-2 and RS-1 to RPD, in the Rural and Wetlands Land Use Categories to allow a maximum of 63 dwelling units, a private airstrip with associated plane hangers, parking, man-made canals, a temporary waste water treatment plant, and a private club. The legal description of the subject property is set forth in Exhibit A attached to this resolution. The request is hereby APPROVED SUBJECT TO the conditions and deviations set forth 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 in substantial compliance with the one page Master Concept Plan entitled "Master Concept Plan for Tranquility Bay Fly-in Community," stamped received July 1, 1999, last revised 06/30/99, attached as Exhibit B, and the "Schedule of Deviations & Uses," stamped Received July 1, 1999, attached as Exhibit C, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the

Master Concept Plan (MCP) are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. **Schedule of Uses**

- Dwelling units, conventional single-family limited to 63
- Aircraft Hangars, limited to use of the residents or guests of this project only (there may be no long term guest rentals), and only as shown on the MCP (each home may also hangar an aircraft in the "garage")
- Residential accessory uses and structures, in compliance with LDC §§34-1171 through 1177, 34-1863, 34-2141 *et seq.*
- Aircraft Landing Facility, private - in compliance with LDC §§34-1231 through 34-1237. Limited to use by residents of this project only, and is limited as shown on the MCP (there may be no commercial use of the airstrip)
- Watercraft use: As further limited by all other conditions:
 - Boat ramp, for use of residents only (not a marina)
 - Docks, limited to a maximum of 12 docks along the north side of the canal, with one single-family dock, providing a maximum of two watercraft mooring slips (for Lots 28 through 39), to serve each home site along this side of the canal - limited to residents only
 - Multi-slip docking facility for a maximum of 51 parallel boat slips along the south side of the canal to serve the remaining residential units only
- Club, private (COP use is not granted as part of this approval)
- Entrance gates and gatehouse
- Excavation, water retention
- Recreation facilities, private on-site
- Signs, in accordance with LDC §30
- Essential Service Facilities, Group II:
 - 1) limited to a temporary sewage disposal or treatment facilities—to serve this project only; and
 - 2) the owner must take all steps necessary to connect to central sewer service within 60 days of the time it becomes available; and
 - 3) the developer, or its successor in interest, must pay all costs associated with the dismantling and discontinuation of the temporary facility and the connection to sewer service.
- Temporary construction trailer, in compliance with LDC §34-3041

b. **Site Development Regulations**

Minimum Area:	7,500 square feet
Minimum Depth:	100 feet
Minimum Width:	75 feet
Minimum Setback, side:	7.5 feet
Minimum Setback, rear:	25 feet

Minimum Setback, waterbody:	25 feet
Minimum Setback, street:	15 feet
Maximum lot coverage:	40 percent of total lot area

Maximum Height: No building or structure may be erected so that the peak of the roof exceeds 38 feet above average grade, or 45 feet above mean sea level, whichever is lower, within three stories.

3. The following conditions address environmental issues such as gopher tortoises, wading birds, the southern bald eagle, the existing osprey nest and open space:
 - a. Gopher tortoises must be relocated per the management guidelines provided within the "Protected Species Management Plan" counter stamped March 5, 1999. The eagle nest and gopher tortoise preserve as shown on the approved MCP must be preserved in perpetuity. Should the developer obtain a relocation permit from the Florida Game and Fresh Water Fish Commission (FGFWFC), management details per LDC §10-474 must be provided.
 - b. A southern bald eagle management plan, approved by the U.S. Fish and Wildlife Service (USFWS) must be submitted to the Division of Planning, Environmental Sciences prior to local development order or early work approval for any phase of development. A revised management plan will be presented to the Lee County Eagle Technical Advisory Committee (ETAC) for their input and suggestions prior to submittal to the USFWS.
 - c. At the time of local development order submittal, the plans must either show the location of the existing osprey nest preserved in place or indicate where a nesting platform will be provided to encourage the continued use of the area by the ospreys. The platform location will be subject to the Division of Planning, Environmental Sciences Staff review and approval.
 - d. At the time of local development order submittal, preservation of the wetlands abutting Matlacha Pass and the uplands for the eagle nest and gopher tortoises must be provided per the approved MCP.
 - e. A 25-foot-wide (average, with 10-foot minimum width) indigenous preservation buffer must remain on the single-family lots numbered 46 through 58. The buffer must be located along the lot edge where it abuts the eagle nest and gopher tortoise preserve area. All native trees with a 4-inch or greater DBH (diameter at breast height) and native understory vegetation within the dripline of the trees must remain in the buffer area. Additional native long leaf slash pine trees with a 10-inch or greater DBH, must be preserved and incorporated into the home-site design to the maximum extent possible. The preservation requirements including details on protective barricades and inspections/approvals by the Developer or their designee must be included in an educational brochure provided to each home purchaser as well as in the Deed Restrictions for the development. The preservation related

requirements in the educational brochure and the Deed Restrictions must be provided to the Division of Planning, Environmental Sciences for review and approval at the time of local development order submittal.

4. The following conditions address concerns and afford protection to biological resources within the northern canal and the areas of Matlacha Pass near the project:

- a. All watercraft mooring or using the boat ramp within the Tranquility Bay RPD must be limited in type, length, hull and draft as follows:

Type:	Propulsion by outboard or inboard/outboard (I/O) motor, capable of lower unit tilt. Jet propelled and inboard powered watercraft are specifically prohibited.
Length:	25 feet maximum in total length (as specified by the manufacturer).
Hull:	Flat bottom, Modified "V," pontoon or other shallow draft hulls. Deep "V" hulls are specifically prohibited.
Draft:	15 inches of draft maximum as specified by manufacturer.

- b. A water depth gauge, large enough to be clearly visible by a watercraft operator, must be placed at the following locations:

- Mouth of the canal for observation by entering and exiting watercraft operators.
- Boat ramp for observation by those launching watercraft.

The water depth gauge must show the lowest water depth in the Matlacha Pass channel so the watercraft operators will have timely information of water depth in the channel at the time accessing the channel.

- c. All docks within Tranquility Bay RPD, both the single-family residential docks and the multi-slip docks, must be designed to restrict the size (in compliance with Condition 4.a. above) of watercraft mooring at those facilities. Slip area, use of mooring pilings, and size of boat lifts are examples of techniques that can be used to limit watercraft dock and slip size.
- d. All docks within Tranquility Bay RPD, both the single-family residential docks and the multi-slip docks must be under the control of a single legal entity. This entity, such as a "dock owners' association," will have the responsibility and legal authority to ensure compliance with all dock and canal related conditions of this zoning approval. Any compliance issues with the requirements or restrictions of the canal or docks will be handled directly through this association entity.
- e. The deed covenants or restrictions must include dock related restrictions (Conditions 4.a. and 4.c.), and must include specific enforcement action that will be taken for noncompliance to these restrictions. The deed covenants or restrictions must be reviewed and approved by the Lee County Division of Planning and Lee County Attorney's Office prior to recording.

- f. Each contract for the sale of real estate within Tranquility Bay Fly-In Community RPD must include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following statement in boldfaced and conspicuous type, which is larger than the type in the remaining text of the contract:
- 1) water depths within the designated channel area range from a high of three feet to a low of 1.3 feet. Given the severe depth restrictions in the channel, owners must limit the type, length, hull, and draft of their watercraft to those which can safely traverse waters of such depth.
 - 2) the type of watercraft will be limited to outboard or inboard/outboard (I/O) capable of lower unit tilt. All jet propelled watercraft and other inboard only powered watercraft are specifically prohibited.
 - 3) the length of watercraft will be limited to a maximum of 25 feet (as specified by the manufacturer).
 - 4) hulls will be limited to flat bottom, modified "V," pontoon, or other shallow draft hulls. Deep "V" hulls are specifically prohibited.
 - 5) drafts will be limited to fifteen inch (15") maximum as specified by the manufacturer.
- g. Each lot purchaser will be provided prior to lot sale closing a Matlacha Pass - Estuarine Educational Packet that includes the following items:
- Navigational chart of Matlacha Pass, Pine Island Sound and Charlotte Harbor
 - Bathymetric information of the Matlacha Pass area surrounding the project
 - Current tide chart and general information on how to use it
 - Biological and economic importance of mangroves and seagrasses
 - Safe watercraft operation in shallow water depth areas
 - Watercraft prop dredging and bottom scarring - The problem and how to prevent the resource damage
 - Manatee educational information and boater recommendations
- h. Educational signage must be placed at the boat ramp and the mouth of the canal with information regarding estuarine systems and manatees. The Florida Department of Environmental Protection (FDEP), Charlotte Harbor Aquatic and State Buffer Preserves Offices have excellent signage regarding the aquatic preserve system that would be directly applicable to this site.
- i. The navigational channel leading from the mouth of the canal to the Pine Island Creek navigational channel must be appropriately marked by the use of Coast Guard approved day beacons. Any channel marking is subject to approval by the U.S. Army Corps of Engineers and the FDEP. The recommendation to mark this

channel should not be perceived in any manner as approval or encouragement of dredging. New dredging in aquatic preserves is strongly discouraged by the Lee County Comprehensive Plan (Lee Plan) and the Charlotte Harbor Aquatic Preserve Management Plan.

- j. A Docking Facility Hurricane Plan must be prepared to address the preparation and actions to be taken regarding watercraft for a storm event. The plan must include measures that will be taken by residents to minimize damage to watercraft, adjacent properties and the environment.
5. The following conditions are to help mitigate potential hurricane damage and/or loss of life, as well as to ensure compliance with comprehensive plan objectives. Prior to approval of a local development order the Developer must:
- a. Establish a residents' or property owners' association. The association must provide an educational program on an annual basis, in conjunction with the staff of the Lee County Office of Emergency Management (OEM), which will provide literature, brochures and speakers for Hurricane Awareness Preparedness Seminars, describing the risks of natural hazards. The intent of this recommendation is to provide a mechanism to educate residents concerning the actions they should take to mitigate the dangers inherent in these hazards.
 - b. Formulate an emergency hurricane notification and evacuation plan for the development, which will be subject to review and approval by OEM.
 - c. The Developer must cooperate with the Division of Public Safety/Emergency Management to establish some means, reasonably related to this project's impacts, to mitigate this project's possible adverse impacts on the County's hurricane preparedness program and the safety of the public at large. These means could include the provision of equipment, such as an emergency power generator for a public shelter, monies-in-lieu of equipment, or such other goods, materials or actions deemed appropriate by Public Safety/Emergency Management staff, which results in the provision of additional shelters, or improvement of roads for use as additional evacuation routes.
6. The Developer must improve all roadways or easements from Stringfellow Road to every entrance of this project in compliance with LDC §10-291. Roadways within the project must also be improved by the Developer in compliance with this section of the LDC. Additional conditions may be required prior to local development order approval, to address safety concerns associated with aircraft utilizing the roadways within the project to access the landing strip.
7. Buildings exceeding 35 feet in height must maintain additional building separation as regulated by LDC §34-2174(a).
8. The Developer must record in the Public Records of Lee County, Florida, the Declaration

of Limitation on Intensity of Development for Tranquility Bay Development, Inc., attached as Exhibit E, within 45 days of the final approval of this rezoning request and prior to Developer conveying, granting, or otherwise transferring any interest in the subject property. The recorded document is intended to acknowledge and resolve the effect of SF 85-06-39 on the overall density of the project. Failure to timely record the referenced Declaration will preclude development until such time as the document is recorded.

9. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
10. Approval of this rezoning does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the 2020 Lee Plan Planning Communities Map and Acreage Allocations Table, Map 16 and Table 1(b), of the Lee Plan.
11. This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.
12. Along with Deviation (6), the developer must provide a solid wall or combination berm and solid wall not less than eight feet in height according to the cross sections shown as Sections B-B, C-C, and D-D as shown on the revised Master Concept Plan, last revised 06/30/99.

SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from the LDC §34-2013(a) requirement for parking lots to be designed so as to permit vehicles exiting the parking lot to exit the lot in a forward motion, to allow back out parking. This deviation is APPROVED, BUT IS LIMITED ONLY to the four spaces shown across from the club house/recreation facility on the approved MCP.
2. Deviation (2) seeks relief from the LDC §10-418(d)(9) provision [shown on the MCP as 10-414(h), but was recently changed] limiting the 50-foot-wide natural waterway buffer to passive recreation facilities, to allow placement of rip rap slope protection within the buffer. This deviation is APPROVED, SUBJECT TO the following conditions:
 - a. Rip rap rock placed along the Matlacha Pass shoreline must be located landward of the mean high water line (MHWL) and landward of mangrove vegetation.
 - b. Rip rap rock must be placed so that no damage to wetland vegetation occurs.
 - c. Two staggered rows of mangroves must be planted three feet on center at the toe of the rip rap rock.
3. Deviation (3) seeks relief from the LDC §10-418(d)(9) requirement [shown on the MCP as 10-414(h), but was recently changed], that existing vegetation within the buffer area must be retained, to allow trimming of existing vegetation as allowed by state law. This deviation

is APPROVED, SUBJECT TO the following conditions:

- a. Mangrove trimming in the natural waterway buffer must be conducted in accordance with State law.
 - b. Mangrove and buttonwood trees within the natural waterbody buffer located adjacent to the east side of Lots 11 through 14 may be pruned in a horticulturally correct manner, subject to Florida Department of Environmental Protection permits.
 - c. No trees within the buffer except those within the runway path may be pruned by reducing the top of the tree crown by techniques such as topping, hatracking, or pollarding.
4. Deviation (4) seeks relief from the LDC §10-710(a) requirement to provide a 10-foot-wide utility easement along both sides of a 35-foot-wide, private local street right-of-way, to allow the easement to be provided along only one side. This deviation is APPROVED, SUBJECT TO the condition that the development complies with the waiver requirement of LDC §10-355. This request can be processed as part of the development order application and can be approved if the Developer obtains letters of no objection from the applicable utility companies as outlined in LDC §10-355.
 5. Deviation (5) seeks relief from the LDC §34-2192 requirement to provide a 20-foot-wide building and structural setback from the edge of private right-of-way or street easements, to allow a 15-foot-wide building and structural setback. This deviation is APPROVED.
 6. Deviation (6) seeks relief from the LDC §§34-935(b)(4) and 10-416(d)(6) requirements that roads, drives, or parking areas located less than 125 feet from existing residential lots must provide a solid wall not less than eight feet in height, or a berm/wall combination not less than 25 feet from the abutting property with a minimum of five trees and 18 shrubs per 100 linear feet, to allow provision of a solid wall not less than eight feet in height, five feet from the property line with 18 shrubs (36 inches in height), where designated, as shown by MCP Section B-B and to provide a solid wall not less than eight feet in height, five feet from the property line with five trees and 18 shrubs (36-inch minimum height) per 100 linear feet, where designated, as shown by MCP Sections C-C or D-D. This deviation is APPROVED.
 7. Deviation (7) seeks relief from the LDC §10-416(d)(7) requirement that uses or activities generating noise, dust, odor, heat, glare, or other similar impacts provide a Type "C" or "F" buffer, to allow a Type "F" buffer or a solid wall not less than eight feet in height, five feet from the property line, landscaped with a minimum of five trees and 18 shrubs (36-inch minimum height) per 100 linear feet. This deviation is APPROVED.
 8. Deviation (8) seeks relief from the LDC §10-296(b), Table 3, requirement for privately maintained roads and streets to have a minimum right-of-way width of 35 feet, to allow a minimum right-of-way width of 26 feet. This deviation is APPROVED.

SECTION D. EXHIBITS:

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

- Exhibit A. The legal description and STRAP number of the subject property.
Exhibit B. A reduced copy of the Tranquility Bay Fly-In Community Master Concept Plan.
Exhibit C. Schedule of Deviations & Uses
Exhibit D. A map depicting the subject parcel (shaded in) in relation to the surrounding area.
Exhibit E. Declaration of Limitation on Intensity of Development for Tranquility Bay Development, Inc.

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, 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.

The foregoing resolution was adopted by the Lee County Board of Commissioners by a motion by Commissioner Andrew W. Coy, and seconded by Commissioner John E. Albion and, upon being put to a vote, the result was as follows:

Ray Judah	Aye
John E. Manning	Aye
Douglas R. St. Cerny	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 18th day of October, 1999.

ATTEST:
CHARLIE GREEN, CLERK

BY:

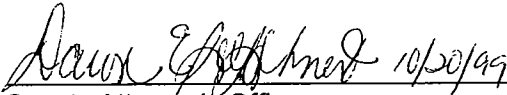

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:


Chairman

Approved as to form by:


County Attorney's Office

MINUTES OFFICE

Ruth F

FILED OCT 25 1999

LEGAL DESCRIPTION

EXHIBIT "A"

THE SOUTHEAST ONE QUARTER (SE 1/4) OF THE NORTHEAST ONE QUARTER (NE 1/4) OF THE NORTHWEST ONE QUARTER (NW 1/4). SUBJECT TO A THIRTY FOOT EASEMENT ON THE WEST SIDE FOR RIGHT-OF-WAY PURPOSES ONLY. SUBJECT TO A SIX FOOT EASEMENT ON THE EAST SIDE FOR UTILITY PURPOSES ONLY. THE NORTHEAST ONE QUARTER (NE 1/4) OF THE SOUTHEAST ONE QUARTER (SE 1/4) OF THE NORTHWEST ONE QUARTER (NW 1/4). SUBJECT TO A THIRTY FOOT EASEMENT ON THE WEST AND SOUTH SIDE FOR RIGHT-OF-WAY PURPOSES ONLY, AND SUBJECT TO A SIX FOOT EASEMENT ON THE EAST SIDE FOR UTILITY PURPOSES ONLY, ALL LANDS LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA.

AND:

THE NORTH ONE HALF (N 1/2) OF GOVERNMENT LOT 1, SECTION 16, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA.

AND:

THE SOUTH ONE HALF (S 1/2) OF GOVERNMENT LOT 1, SECTION 16, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, BEING ALL OF TRANQUILITY BAY CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION THEREOF, RECORDED IN OFFICIAL RECORD BOOK 1442 AT PAGE 112 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

AND:

BEGIN AT THE SOUTHWEST CORNER OF U.S. GOVERNMENT LOT 1 IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, AND RUN EAST 200 FEET; THENCE NORTH 200 FEET; THENCE WEST 200 FEET; THENCE SOUTH 200 FEET TO THE POINT OF BEGINNING.

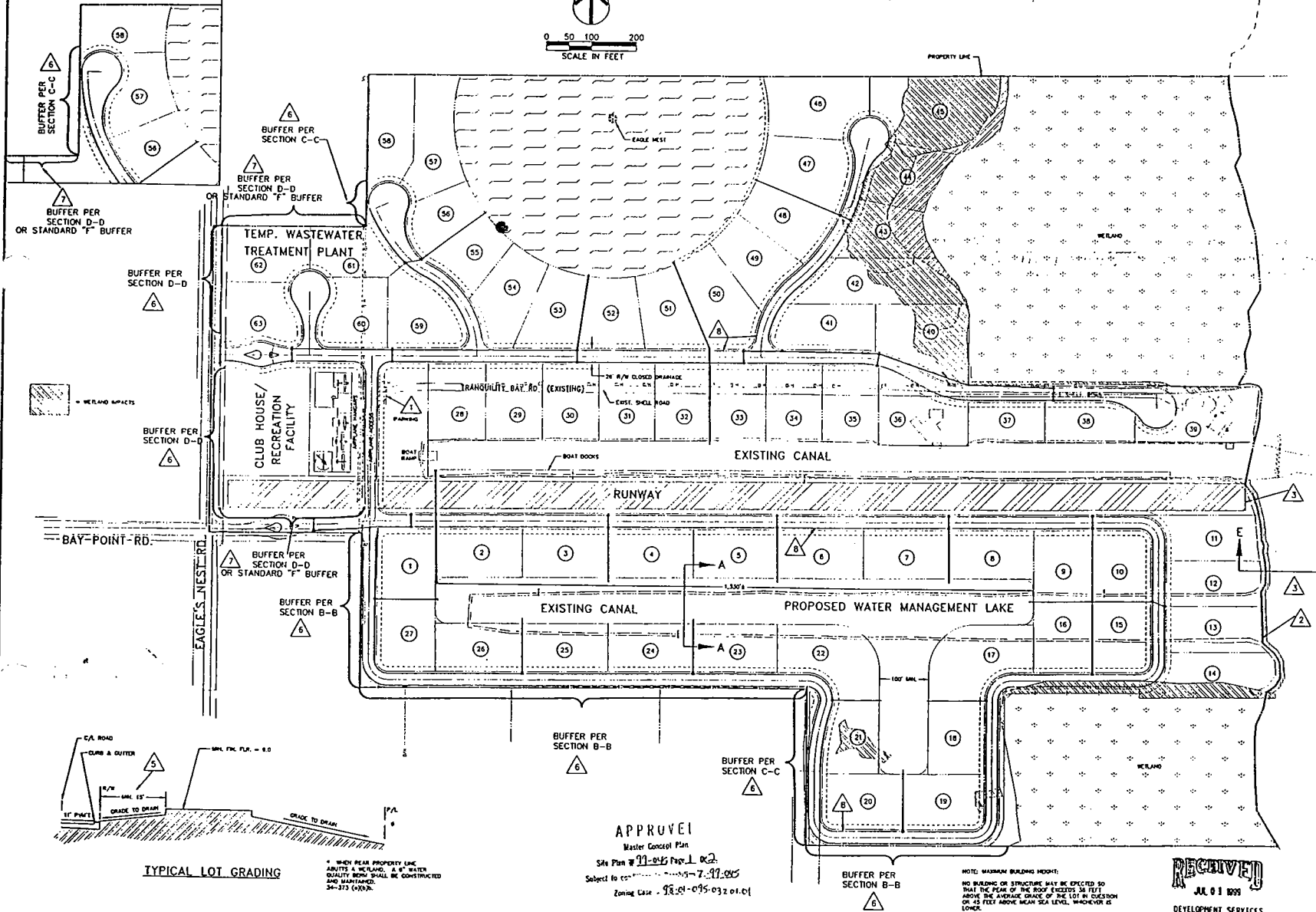
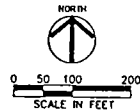
AND:

LOT 4, BAYVIEW RANCHETTES SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN OFFICIAL RECORDS BOOK 775, PAGE 408, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

STRAP NUMBERS

The applicant has indicated the STRAP #'s of the subject property are 16-44-22-00-00002.0000, 16-44-22-00-00004.0000, 16-44-22-00-00007.0000, 16-44-22-05-00000.0040, 16-44-22-10-00000.008A, and 16-44-22-10-00000.0090

LOT 57 - 58 OPTION



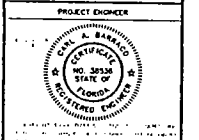
Barraco
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CIVIL ENGINEERS, SURVEYORS AND
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**TRANQUILITY
BAY
DEVELOPMENT
INC.**

1620 RENT FINE DRIVE
FORT MYERS, FL 33913
PHONE (941) 706-0460
FAX (941) 706-9246

PROJECT NAME
**TRANQUILITY
BAY
FLY-IN
COMMUNITY**

SECTION 16, TOWNSHIP 44 SOUTH, RANGE 23 EAST
PINE ISLAND, LEE COUNTY, FLORIDA



FILE NAME	21329.dwg	
PLOT DATE	07-01-1999 08:00	
REFERENCE	21329A00.DWG	
REFERENCE		
REFERENCE		
	INITIALS	DATE
DESIGNED	TRH	1-11-1999
DRAWN	TRH	2-22-1999
CHECKED	CAB	
PLAN REVISIONS		
4-14-1999	BLOG HEIGHT NOTE	
5-28-1999	SECTIONS/DEVIATIONS	
5-30-1999	LOT OPTION	

PLAN STATUS
APPROVAL SUBMITTAL PLANS
NOT FOR CONSTRUCTION

**MASTER
CONCEPT PLAN
EXHIBIT IV-F**

PROJECT / FILE NO.	SHEET NUMBER
21329 16-44-22	

RECEIVED
JUL 01 1999
DEVELOPMENT SERVICES

EXHIBIT B

SCHEDULE OF USES

This project may be developed with the following uses:

Dwelling units, conventional single family limited to 63.

Aircraft Hangars, limited to use of the residents or guests of this project only (no long term guest rentals), and only as shown on the MCP - each home may also hangar and aircraft in the garage.

Residential accessory uses and structures, in compliance with LDC Sec. 34-1171 through 1177, 34-1863, 34-2141 et seq.

Aircraft Landing Facility, private - in compliance with LDC Sec. 34-1231 through LDC Sec. 34-1237. This use is limited to use by residents or guests of this project only, and is limited as shown on the MCP.

Water craft use: As further limited by all other conditions:

Boat ramp, for use of residents only (not a marina)

Docks, limited to a maximum of 12 docks along the north side of the canal, with one single-family dock to serve each home site along this side of the canal - limited to residents only.

Multi-slip docking facility for a maximum of 51 parallel boat slips along the south side of the canal to serve the remaining residential units only.

Club, private (COP use is not granted as part of this approval)

Entrance gates and a gatehouse.

Excavation, water retention.

Recreation facilities, private on-site.

Signs, in accordance with LDC Sec. 30.

Essential Service Facilities, Group II.

1) limited to a temporary sewage disposal or treatment facilities to serve this project only; and

2) owner must take all steps necessary to connect within 60 days of availability of central sewer service and actively pursue that to conclusion of connecting to central sewer service; and

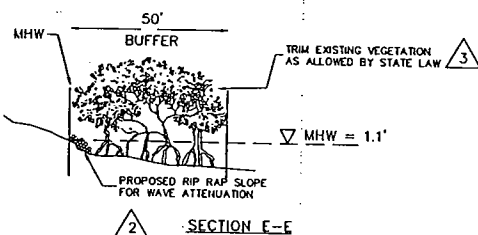
3) the owners must pay all costs associated with the dismantling and discontinuation of the temporary facility and the connection to the central sewer service.

Temporary construction trailer, in compliance with LDC Sec. 34-3041.

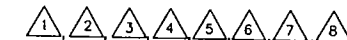
Temporary uses (df)

Fences and walls (df)

ing lot, accessory (df)



SCHEDULE OF DEVIATIONS



SEE MASTER CONCEPT PLANS FOR LOCATION OF REQUESTED DEVIATIONS

1 REQUIREMENT THAT ALL PARKING LOTS SHALL BE DESIGNED SO AS TO PERMIT VEHICLES EXITING THE PARKING LOT TO ENTER THE STREET RIGHT-OF-WAY OR EASEMENT IN A FORWARD MOTION [LDC SECTION 34-2013(a)] TO ALLOW INDIVIDUAL PARKING SPACES TO BACK ONTO ACCESS DRIVES AND EASEMENTS.

2 REQUIREMENT THAT THE USE OF THE 50 FOOT BUFFER TO THE ABUTTING NATURAL WATERWAY IS LIMITED TO PASSIVE RECREATION FACILITIES [SECTION 10-416(d)(9)] TO ALLOW PLACEMENT OF RIP RAP SLOPE PROTECTION WITHIN THE 50' BUFFER.

3 REQUIREMENT FOR THE 50' BUFFER TO THE ABUTTING NATURAL WATERWAY [SECTION 10-416 (d)(9)] TO ALLOW TRIMMING OF EXISTING VEGETATION AS ALLOWED BY STATE LAW.

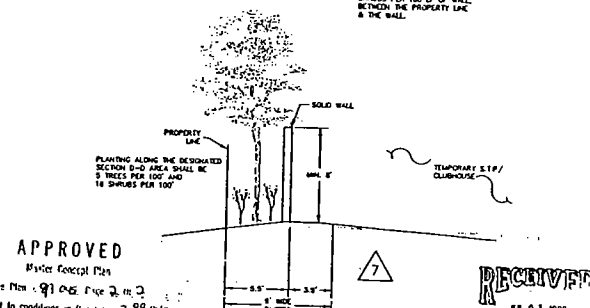
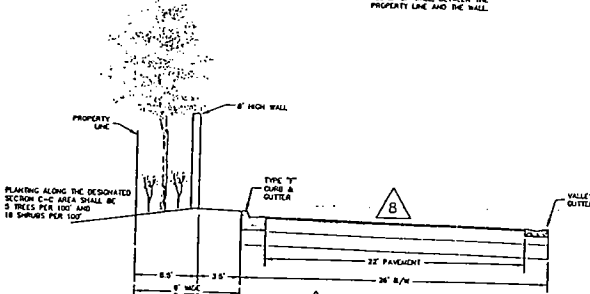
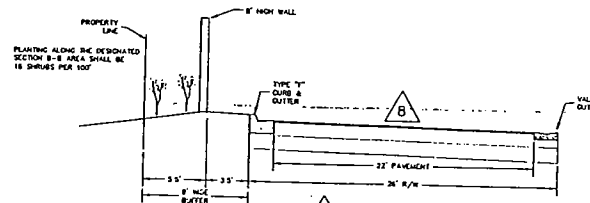
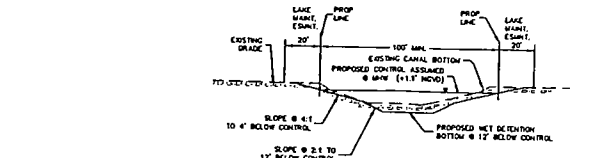
4 REQUIREMENT THAT A TEN FOOT WIDE PUBLIC UTILITY EASEMENT BE PROVIDED ON EACH SIDE OF THE 35' PRIVATE LOCAL STREET RIGHT-OF-WAY [SECTION 10-710(a)] TO ALLOW A 10' SIDE PUBLIC UTILITY EASEMENT BE PROVIDED ON ONE SIDE OF THE RIGHT-OF-WAY.

5 REQUIREMENT THAT ALL BUILDINGS AND STRUCTURES SET BACK 20' FROM THE EDGE OF PRIVATE RIGHT OF WAY OR STREET EASEMENT LINE [SECTION 34-2192 (a)] TO ALLOW BUILDING AND STRUCTURE TO BE SETBACK 15' FROM PRIVATE LOCAL ROAD RIGHT OF WAY OR STREET EASEMENTS.

6 REQUIREMENT THAT ROADS, DRIVES OR PARKING AREAS LOCATED LESS THAN 125 FEET FROM EXISTING RESIDENTIAL LOTS PROVIDE A SOLID WALL NOT LESS THAN EIGHT FEET IN HEIGHT OR BERM / WALL COMBINATION NOT LESS THAN 25 FEET FROM THE ABUTTING PROPERTY WITH A MINIMUM OF FIVE TREES AND 18 SHRUBS PER 100 LINEAL FEET [SECTION 34-935 (b)(4) AND 10-416(d)(6)] TO PROVIDE A SOLID WALL NOT LESS THAN EIGHT FEET IN HEIGHT, 5 FEET FROM THE PROPERTY LINE WITH 18 SHRUBS (36" MIN. HEIGHT) WHERE DESIGNATED AS SECTION B-B AND TO PROVIDE A SOLID WALL NOT LESS THAN EIGHT FEET IN HEIGHT, 5 FEET FROM THE PROPERTY LINE WITH FIVE TREES AND 18 SHRUBS (36" MIN. HEIGHT) PER 100 LINEAL FEET WHERE DESIGNATED AS SECTIONS C-C OR D-D.

7 REQUIREMENT THAT USES OR ACTIVITIES THAT GENERATE NOISE, DUST, ODOR, HEAT, GLARE OR OTHER SIMILAR IMPACTS, MUST PROVIDE A TYPE C OR F BUFFER [SECTION 10-416 (d) (7)] TO PROVIDE A TYPE F BUFFER OR A SOLID WALL NOT LESS THAN EIGHT FEET IN HEIGHT, 5 FEET FROM THE PROPERTY LINE, LANDSCAPED WITH A MINIMUM OF FIVE TREES AND 18 SHRUBS (36" MIN. HEIGHT) PER 100 LINEAL FEET.

8 REQUIREMENT THAT ROADS AND STREETS TO BE PRIVATELY MAINTAINED, HAVE A MINIMUM RIGHT OF WAY WIDTH OF 35' [SECTION 10-296 (b) TABLE 3] TO ALLOWING A MINIMUM RIGHT OF WAY OF 26' FOR PRIVATELY OWNED AND MAINTAINED ROADS AND STREETS.



APPROVED

Master Concept Plan
Site Plan: 9/1/05 File 2, 11, 2
Subject to conditions in Resolution 2-99-045
Zoning Code # 12-01-05-052

RECEIVED
JUL 01 1999
DEVELOPMENT SERVICES

Barraco
and Associates, Inc.

CIVIL ENGINEERS, SURVEYORS AND
LAND DEVELOPMENT CONSULTANTS

www.Barraco.net

2121 WEST FIRST STREET, SUITE 4
FORT MYERS, FLORIDA 33902-2600
PHONE (841) 461-3170
FAX (841) 461-3168

CLIENT

**TRANQUILITY
BAY
DEVELOPMENT
INC.**

12230 BENT PINE DRIVE
FORT MYERS, FL 33913
PHONE (841) 461-3170
FAX (841) 461-3168

PROJECT NAME

**TRANQUILITY
BAY
FLY-IN
COMMUNITY**

SECTION 16, TOWNSHIP 36 SOUTH, RANGE 32 EAST
PINELAND, LEE COUNTY, FLORIDA

PROJECT ENGINEER



FILE NAME: 21329-0060.dwg

PLOT DATE: 07-01-1999 08:01

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16-44-22

SHEET NUMBER

ZONING MAP

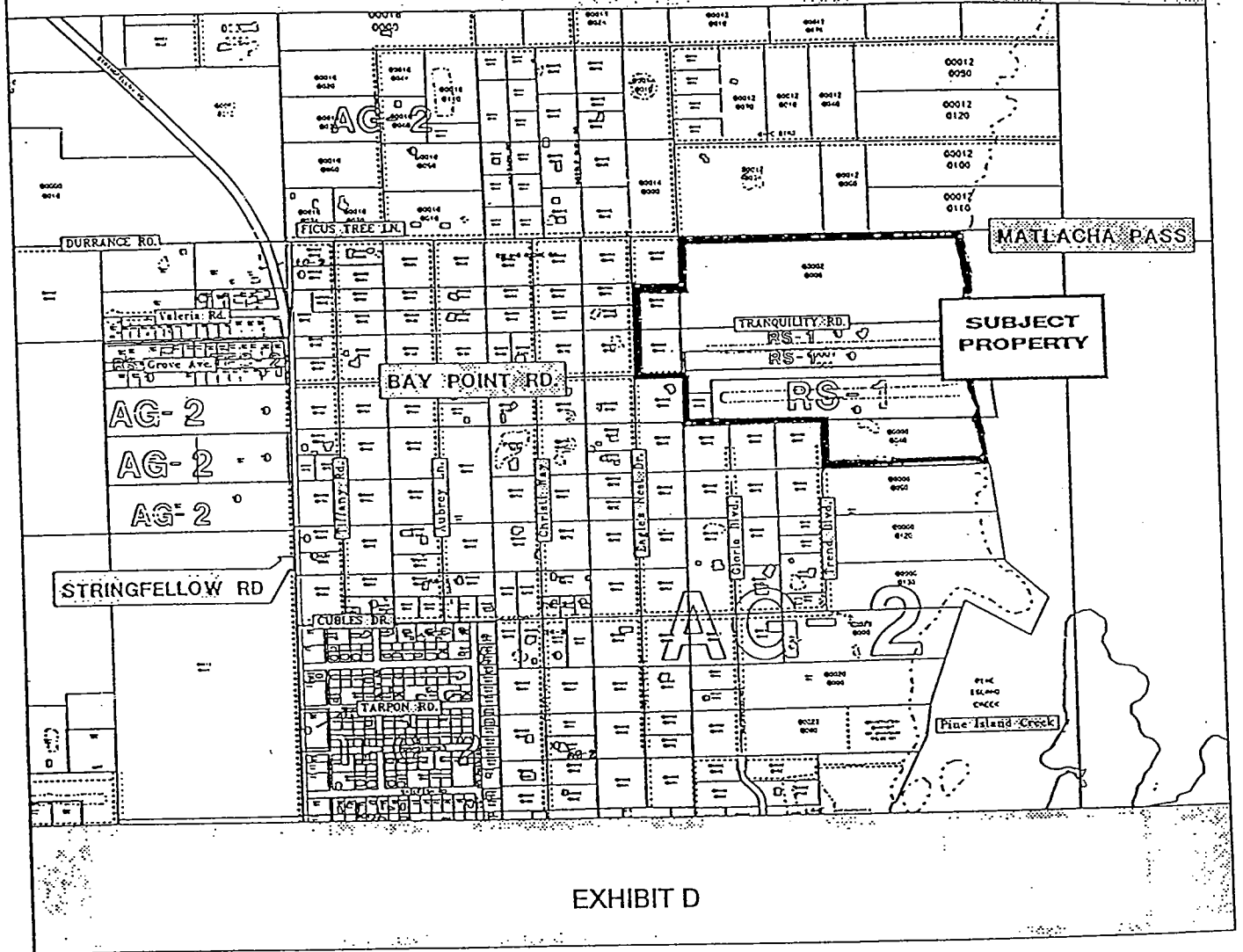


EXHIBIT D

**DECLARATION OF LIMITATION
ON INTENSITY OF DEVELOPMENT
FOR
TRANQUILITY BAY DEVELOPMENT, INC.**

THIS DECLARATION is made this __ day of _____, 1999, by Tranquility Bay Development, Inc., a Florida corporation, hereinafter called the "Declarant," for itself and its successors, grantees, and assigns.

PREMISES:

WHEREAS, Declarant owns certain real property located in Lee County, Florida, and intends to create thereon a residential planned development (RPD) of single-family homes and related recreational and other common facilities and amenities, to be known as "Tranquility Bay;" and

WHEREAS, the real property which is intended to be developed as Tranquility Bay (the "Lands"), is described in Exhibit "A" to this Declaration; and

WHEREAS, to resolve an outstanding density issue and to preserve, protect and enhance the values of the property and amenities in the Community, and the general health, safety and welfare of the residents, Declarant deems it desirable to subject the Community to certain covenants, conditions, and restrictions; and

WHEREAS, a prior owner of the original \pm 31-acre Tranquility Bay parcel on July 23, 1980, recorded condominium documents to create a 47-unit land condominium plat on that parcel; and

WHEREAS, subsequent to the recording of the Tranquility Bay condominium documents, the Lee Plan was amended to designate the \pm 31-acres as "Rural," with a density of 1 unit per acre; and

WHEREAS, a prior owner obtained from Lee County Administrative Interpretation of Single-Family Residence Provision #SF-85-06-39 acknowledging forty-seven (47) single-family residences could be constructed on the $31\pm$ acre tract; and

WHEREAS, Administrative Interpretations do not contain expiration dates; and

WHEREAS, the land condominium was later terminated in the belief that the 47 single family residences approved in SF-85-06-39 would not be affected; and

WHEREAS, termination of the land condominium has raised a question about how the Administrative Interpretation should be applied, leading to a dispute between Lee County and the Declarant over the number of units presently permitted on the entire Lands; and

WHEREAS, Lee County and the Declarant have resolved to settle this dispute by agreeing that the entire \pm 74 acres of Lands is limited to a total of sixty three (63) single-family residential dwelling units, so long as the Declarant waives any further right to rely upon the Administrative Interpretation in the future, except as it supports this settlement reached through the rezoning process.

NOW THEREFORE, the Declarant hereby declares that the Lands described in Exhibit "A" hereto are and will be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Declaration, which runs with the Lands and is binding on all parties having any right, title or interest in the Lands or any part thereof, their heirs, successors and assigns, and will inure to the benefit of Lee County. Nothing herein contained, and no violation of these covenants, conditions and restrictions will invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value.

1. This Declaration of Covenants, Conditions and Restrictions is being adopted and recorded in favor of, and is enforceable by, Lee County, a political subdivision of the State of Florida, in order to resolve ambiguities that may exist with regard to the continuing effect of Administrative Interpretation #SF-85-06-39.

2. By this Declaration, Declarant affirmatively agrees that the entire \pm 74 acres of Lands is, and will be, limited to no more than sixty three (63) dwelling units.

3. The Developer, its successors, and assigns must develop the Lands under the current plan of development as expressed herein and in Zoning Resolution 99-45, without adding more units or density, unless it is lawfully modified to add more property at densities then existing under the Lee Plan, within the six (6) year term of any approved development order, or lawful extensions thereof, otherwise upon expiration of said development order thereafter the site will be subject to the then current density provisions of the Lee Plan and the effect or provisions of Administrative Interpretation #SF-85-06-39 will be deemed terminated, revoked, and of no effect. Nothing herein may be interpreted as binding the County to approve a request for extension of a development order.

4. Developer, its successor or assigns, will file an application for a Lee County development order within 6 months of recording this Declaration and will diligently pursue development order approval for the Lands. If, through no fault of the County, a development order is not approved within twenty four (24) months after recording of this Declaration in the Lee County Public Records, then Administrative Interpretation #SF-85-06-39 will be deemed terminated, revoked and of no effect, and the Lands will be subject

to the then existing density limitations of the Lee Plan.

IN WITNESS WHEREOF, Tranquility Bay Development, Inc., a Florida corporation, hereby executes this Declaration.

Witnesses: **TRANQUILITY BAY DEVELOPMENT, INC.**
a Florida corporation

Print name: _____ By: _____
Joernn Eckermann, President

Print name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was executed before me this ____ day of _____, 1999, by Joernn Eckermann, President of Tranquility Bay Development, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or produced _____ as identification.

Signature of Notary Public

Print, Type, or Stamp commissioned Name
of Notary Public (Affix Notarial Seal) _____