

FILE 1187828 OR BK 02447 Pgs 2054 - 2067 (14pgs) REC'D 04/22/2004 04:15:07 PM
BARBARA T. SCOTT, CLERK, CHARLOTTE COUNTY
REC 84.50

RESOLUTION
2004- 071

A RESOLUTION AMENDING RESOLUTION 92-62, AS AMENDED BY RESOLUTION 93-66, APPROVING THE DEVELOPMENT ORDER FOR HARBORVIEW, A DEVELOPMENT OF REGIONAL IMPACT; PROVIDING FOR AMENDMENT OF BUILDOUT DATES FOR THE HARBORVIEW DEVELOPMENT OF REGIONAL IMPACT; PROVIDING FOR REANALYSIS OF FLORIDA SCRUB-JAY AND TRAFFIC IMPACTS; FINDING THAT THIS AMENDMENT DOES NOT CONSTITUTE A SUBSTANTIAL DEVIATION; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on March 17, 1992, pursuant to Section 380.06 Florida Statutes, the Board of County Commissioners of Charlotte County, Florida ("Board") approved and adopted Resolution 92-62, constituting the Harborview Development of Regional Impact ("DRI") Development Order; and

WHEREAS, on May 8, 1992, the State of Florida Department of Community Affairs ("DCA") filed an appeal of the Development Order reflected in Resolution 92-62; and

WHEREAS, the Board considered the reports and recommendations of the Southwest Florida Regional Planning Council, Charlotte County staff, the Planning and Zoning Board, and the Department of Community Affairs, and in order to reconcile the appeal, certain changes were made to Resolution 92-62 and pursuant to a Settlement Agreement, the Board adopted Resolution 93-66 on May 11, 1993 ("the Development Order"); and

WHEREAS, Eugene M. Grant & Company, LLC ("Applicant") has submitted a Notice of Proposed Change requesting the Board to consider amendments to the Development Order extending the buildout dates for the phases of the Development Order, and requiring a reanalysis of the Florida scrub-jay and traffic impacts of the Harborview DRI

WHEREAS, the Southwest Florida Regional Planning Council reviewed and considered the proposed amendments submitted by the Applicant and recommended acceptance of the proposed amendments to the Development Order finding that they do not appear to create a reasonable likelihood of additional regional impacts on regional resources or facilities; and

WHEREAS, the Charlotte County Planning and Zoning Board reviewed and considered the proposed amendments and recommended approval, finding that the proposed amendments do not constitute a substantial deviation; and

WHEREAS, the Board has reviewed and considered the amendments requested by Applicant, finds them consistent with the Charlotte County Comprehensive Plan and consistent with the previously approved Harborview DRI Development Order.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Charlotte County, Florida:

1. The Proposed Phasing Schedule contained in Paragraph A of Part I, A. of Resolution 93-66 is hereby deleted in its entirety and replaced with the revised Proposed Phasing Schedule, which follows:

<u>Land Use</u>	<u>2003-2008 Phase One***</u>	<u>2006-2010 Phase Two</u>	<u>2008-2011 Phase Three</u>
Commercial* (Retail)	249,744(GSF)	374,616(GSF)	312,180(GSF)
Office/Medical**	125,090(GSF)	187,090(GSF)	156,090(GSF)
Residential (SF)	71 Units	71 Units	69 Units
Residential (MF)	270 Units	407 Units	339 Units

* A maximum of 4,680 parking spaces will be built to accommodate the commercial use.

** The square footage figures set forth in this table for the Office/Medical land uses were calculated based on trip generation assignments for general office use. The maximum actual office square footage buildout may be less if Medical office use is utilized. General Office use may be converted to Medical Office use by reducing the overall office square footage at a ratio based on the trip generation rates for General Office use and the trip generation rates for Medical Office use as defined in the most current edition of the ITE Trip Generation Manual, based on PM/Peak Hour adjacent street traffic. The conversion rate for any Medical Office use shall be approved by Charlotte County and the Florida Department of Community Affairs (hereinafter FDCA), prior to any Building Permits being issued.

A Plan Amendment and rezoning have been approved by Charlotte County authorizing low-density, residential, medium-density residential, high-density residential, commercial and preservation land uses, and designating RSF-5, RMF-10, OMI, GG and Preservation zoning classifications in the development. Office and commercial areas will be developed near I-75 and along the main roads within the development. Approximately 100 acres of the development will be preserved in their natural state. The balance of the property will be developed into single-

family and multi-family housing. The legal description of the project and master Development Plan (Map H) are attached hereto, designated as Exhibit "A"; and incorporated by reference herein.

***Phase I improvements shall be commenced prior to the end of calendar year 2007. Through the end of calendar year 2011 the County shall not down zone the property or reduce density or reduce intensity, unless the local government 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 Developer, or that the change is clearly established by local government to be essential to the public health safety, or welfare.

2. Resolution 93-66 shall be amended by the addition of a new paragraph 5.e., to read in its entirety as follows:

e. A reanalysis of the impacts of the DRI on the Florida scrub jay and a study showing the results thereof shall be performed by the Developer and such study shall be provided to the County prior to construction of any improvements on the property to determine whether the original studies and analysis properly identify impacts. Such reanalysis and study shall be performed in accordance with standards generally accepted in the industry for such wildlife studies and presented in a format acceptable to the County. Any additional impacts identified in such reanalysis and study shall be mitigated by the Developer.

3. Resolution 93-66 shall be amended by the addition of a new paragraph 14.l., to read in its entirety as follows:

l. A reanalysis of the traffic impacts of the DRI and a study showing the results thereof shall be performed by the Developer and such study shall be provided to the County prior to construction of any improvements on the property to determine whether the original studies and analysis properly identify impacts. Such reanalysis and study shall be performed in accordance with standards generally accepted in the industry for such traffic studies and presented in a format acceptable to the County. Any additional impacts identified in such reanalysis and study shall be mitigated by the Developer.

4. The amendments incorporated herein do not constitute a substantial deviation to the conditions of the Harborview DRI Development Order adopted by Resolution 92-62, as amended by Resolution 93-66.

5. All other terms and conditions of the Harborview DRI Development Order not affected by this resolution shall remain in full force and effect.

6. In the event any term(s) of any other resolution with respect to the Harborview DRI Development Order conflict with any term(s) of the within resolution, the terms of this resolution shall govern and supersede those conflicting terms.

7. This resolution shall become effective immediately upon its adoption.

8. The Clerk of Circuit Court is hereby directed to forward a certified copy of this resolution to the applicant, Ms. Valerie Hubbard, Director of Community Planning, Florida Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and to Mr. David Burr, Executive Director, Southwest Florida Regional Planning Council, P.O. Box 3455, North Fort Myers, Florida 33918-3455.

PASSED AND DULY ADOPTED this 13 day of April, 2004.

BOARD OF COUNTY
COMMISSIONERS OF CHARLOTTE
COUNTY, FLORIDA

By: Matthew D. DeBoer
Matthew D. DeBoer
Chairman

Attest:
Barbara T. Scott, Clerk of
Circuit Court and Ex-officio
Clerk to the Board of County
Commissioners

By: Ann L. Pfahler
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: Renée Francis Lee
Renée Francis Lee *ADD*
County Attorney

EXHIBIT "A"

LEGAL DESCRIPTION AND MASTER DEVELOPMENT PLAN MAP H

DESCRIPTION PROVIDED BY CLIENT PER O.R. BOOK 66, PAGE 271:

All less the East 355 feet of that certain parcel or tract of land particularly described as follows:

The North One-Half, and Government Lot 1 less the South 16 acres, and all of Government Lot 2, lying and being in Section 21, Township 40 South, Range 23 East, together with riparian rights thereunto appertaining, and also all accretion thereto.

ALONG WITH:

A parcel of land in Peace River in Section 28, Township 40 South, Range 23 East, per O.R. Book 115, at Page of the Public Records of Charlotte County, Florida, commonly known as part of Island Noll and more particularly described as follows:

From the Northwest corner of Government Lot 2 of Section 21 in said Township 40 South, Range 23 East, run South $01^{\circ}25'01''$ East, along the West line of said Government Lot 2 and the extension thereof, a distance of 2,955.74 feet to the Point of Beginning of the parcel hereinafter described:

Thence South $72^{\circ}21'52''$ East, a distance of 560.50 feet; thence South $04^{\circ}37'21''$ East, a distance of 230.00 feet; thence South $82^{\circ}23'00''$ East, a distance of 52.00 feet; thence North $32^{\circ}02'00''$ East, a distance of 374.00 feet; thence North $71^{\circ}33'35''$ East, a distance of 115.12 feet, more or less, to the intersection with the Southerly extension of the East line of said Government Lot 2; thence South $01^{\circ}39'47''$ East along said Southerly extension, a distance of 465.00 feet to the shoreline of Peace River; thence along said shoreline of Peace River, the following courses and distances: South $46^{\circ}16'46''$ West, a distance of 187.92 feet; then South $55^{\circ}02'00''$ West, a distance of 312.00 feet; thence South $60^{\circ}34'00''$ West, a distance of 405.00 feet; thence South $50^{\circ}23'00''$ West, a distance of 202.00 feet; thence South $56^{\circ}12'30''$ West, a distance of 253.00 feet; thence South $66^{\circ}40'00''$ West, a distance of 270.00 feet, more or less, to the intersection with the Southerly extension of the West line of said Government Lot 2; thence North $01^{\circ}25'01''$ West along said Southerly extension, a distance of 1,464.53 feet, more or less, to the Point of Beginning.

LESS AND EXCEPT:

A portion of Section 21, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

From the Northeast corner of said Section 21, run South $87^{\circ}58'54''$ West, along the North line of said Section 21 a distance of 425.46 feet to the Point of Beginning of the lands herein described:

Said point also being on the West line of HARBOUR HEIGHTS, Section Nine, Part One, as recorded in Plat Book 4, Pages 39-A thru 38-D of the Public Records of Charlotte County, Florida; said point also being the Southeast corner of PUNTA GORDA ISLES, Section Twenty-Three as recorded in Plat Book 12, Page 2-A thru 2-Z-41, of the Public Records of Charlotte County, Florida; thence continue South $87^{\circ}58'54''$ West along said South line of PUNTA GORDA ISLES, Section 23 and the North line of Section 21, a distance of 701.90 feet; thence South $00^{\circ}38'19''$ West, parallel with the East line of said Section 21, a distance of 1,229.64 feet to the Northern Right-of-Way Line of State Road 776, according to the Florida Department of Transportation Right-of-Way Map; Section No. 01560-2501; thence South $89^{\circ}21'11''$ East, along said Right-of-Way Line, a distance of 460.95 feet; thence North $00^{\circ}38'49''$ East, along said Right-of-Way Line, a distance of 10.00 feet; thence South $89^{\circ}21'11''$ East, along said Right-of-Way Line, a distance of 240.20 feet to a point on the West line of said HARBOUR HEIGHTS, Section Nine, Part one; thence North $00^{\circ}38'19''$ East, along said West line, a distance of 1,252.28 feet to the Point of Beginning of the lands herein described.

LESS AND EXCEPT:

The Right-of-Way of Harborview Road (State Road No. S-776) per Florida Department of Transportation Right-of-Way Maps Section No. 01560-2501.

LESS AND EXCEPT:

The Right-of-Way of I-75 (State Road No. 93) per Florida Department of Transportation Right-of-Way Maps Section No. 01075-2401.

Said lands containing 408.22 acres, more or less.

Said lands situate, lying and being in Charlotte County, Florida.

IMAGING MEMO
THE WRITING/TYPING & PRINTING
WAS UNSATISFACTORY FOR
REPRODUCTION AT THE TIME
OF IMAGING.

1/31/92 - Job #9184 - Wankelman-Swen & Associates

SURVEYOR'S DESCRIPTION: PARCEL 3 (ENVIRONMENT-WETLAND)

A parcel of land lying in Section 21, Township 40 South, Range 23 East, Charlotte County, Florida, being more particularly described as follows:

Commence at the Northeast corner of said Section 21; Thence, South 88° 15' 11" West, along the North line of said Section 21, a distance of 2710.11 feet to a point; Thence, South 68° 15' 22" West, along said North line, a distance of 550.42 feet to the Point of Beginning.

Thence continue, South 88° 15' 22" West, along North line of said Section, a distance of 409.45 feet; Thence, South 01° 44' 38" East, a distance of 14.42 feet to the point of curvature of a curve to the left, having as elements a radius of 189.34 feet, a central angle of 28° 23' 36", and a chord bearing of South 15° 56' 26" East; Thence, along the arc of said curve, an arc length of 93.83 feet to the point of tangency of said curve; Thence, South 30° 08' 14" East, a distance of 175.17 feet to the point of curvature of a curve to the right, having as elements a radius of 115.00 feet, a central angle of 93° 30' 48", and a chord bearing of South 16° 37' 10" West; Thence, along the arc of said curve, an arc length of 187.69 feet to the point of reverse curvature of a curve to the left, having as elements a radius of 240.00 feet, a central angle of 84° 25' 06", and a chord bearing of South 21° 10' 01" West; Thence, along the arc of said curve, an arc length of 353.61 feet to the point of tangency of said curve; Thence, South 21° 02' 31" East, a distance of 173.48 feet to a point on a curve to the left, having as elements a radius of 565.00 feet, a central angle of 26° 32' 25", and a chord bearing of North 55° 41' 16" East; Thence, along the arc of said curve, an arc length of 261.72 feet to the end of said curve; Thence, North 18° 47' 22" East, a distance of 91.83 feet to the point of curvature of a curve to the left, having as elements a radius of 350.00 feet, a central angle of 44° 43' 21", and a chord bearing of North 03° 34' 19" West; Thence, along the arc of said curve, an arc length of 273.19 feet to the point of reverse curvature of a curve to the right, having as elements a radius of 160.00 feet, a central angle of 83° 44' 27", and a chord bearing of North 15° 56' 14" East; Thence, along the arc of said curve, an arc length of 233.85 feet to the point of reverse curvature of a curve to the left, having as elements a radius of 240.00 feet, a central angle of 53° 50' 57", and a chord bearing of North 30° 52' 59" East; Thence, along the arc of said curve, an arc length of 225.56 feet to the Point of Beginning.

Containing 4.8726 Acres, more or less.

Said lands situate, lying and being in Charlotte County, Florida.

occurs first. Subsequent to the effective date of any transfer of this property to, Charlotte County, the County, or its designee shall be responsible for all maintenance and monitoring requirements of the Development Order. Prior to any construction, including the installation of any infrastructure, the preservation area shall be flagged on site.

SCRUB JAY

Management

1. The scrub jay habitat preservation area shall be managed in accordance with the following protocol: a well developed shrub layer, one or two meters tall, that covers 50% to 75% of the substrate; at least 25% of the substrate shall be exposed or only sparsely vegetated; any canopy cover (pines) shall be less than 20%.

2. The management area shall be divided into four distinct management units which shall be alternately burned. No more than 25% of the preserve shall be burned at any one time. A map depicting these separate management units, location of fire lanes, etc. is attached to the Development Order as Exhibit "D". Prescribed burning on one management unit shall occur every 5 to 20 years. The decision to burn within this 5 to 20 year period shall be based on a habitat monitoring report prepared by a qualified biologist, and submitted for review, modification and approval by the FGFWFC.

3. Prescribed burning shall be the preferred method of scrub habitat management and shall be conducted by a qualified

professional to avoid smoke or property damage.

4. No burning or mechanical management shall occur in the preserve during the scrub jay nesting season (March through June).

5. Firebreaks shall be no more than 6 feet wide, and shall avoid existing gopher tortoise burrows. Firebreaks may also serve as nature trails.

6. Scrub oaks shall be planted in groups so that open areas remain for scrub jay acorn caching and as gopher tortoise forage. No live oaks shall be used as substitutes for the scrub oaks.

7. Specific signs depicting a "Florida scrub jay crossing" shall be placed south of the Harborview Road/Rio DeJaniero intersection along with posted signs designating a reduced speed limit of 30 mph.

8. The location of access points and nature trails and the extent of any proposed signage in the preserve for benefit of passive recreation or environmental educational purposes shall be coordinated, reviewed and approved by the FGFWFC.

9. Educational materials shall be supplied to property owners, tenants and residents in the Harborview Development. These materials shall include specific reference to gopher tortoise and the Florida scrub jay and shall describe the burn management program. This education material shall be consistent with the pamphlet entitled "The Gopher Tortoise, A Species in Decline" published by the Gopher Tortoise Council, and the pamphlet entitled "The Florida Scrub Jay" published by the FGFWFC. Any property management association formed within the Harborview Development

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shall assume responsibility for distributing the educational materials to subsequent homeowners and residents.

10. Landscaping throughout the Development shall specifically include additional areas of planted scrub oaks for additional scrub jay forage, and other native species beneficial to gopher tortoises. A list of recommended native plant species is attached to this Wildlife Habitat Management Plan, designated as Appendix 1, and incorporated by reference herein. This list shall be provided to all landscape architects and nurseries designing landscaping for the project.

11. Utilities, utility crossings, powerlines and water management facilities shall not be allowed in the preserve area.

12. The preserve area shall be posted and identified onsite as a "no pets allowed" zone. Any and all domestic pets shall be strictly prohibited from being allowed on any of the preservation areas within the Harborview Development.

13. The Rio DeJaniero Road extension through the project shall be cleared to a width of 60 feet in the area of the habitat preserve, except and unless more clearing is required by Charlotte County for special purposes. The purpose of keeping the cleared area as narrow as possible is to minimize the possibility of scrub jays in the preserve being hit by vehicular traffic. Additional clearing beyond the 60 foot minimum shall be submitted to and reviewed by the FGFWFC.

14. The preservation area shall be distinctly recorded in the Public Records of Charlotte County as a "Passive Use Park/Scrub

Jay/Gopher Tortoise Preserve."

15. Any form or manner of interference with or abuse of any preservation area designated within the Harborview Development or of any protected or endangered species shall be strictly prohibited.

Monitoring

1. An annual scrub jay survey shall be conducted by a qualified biologist in order to document the survival of the existing scrub jay family and determine the success of the management techniques. Survey techniques and times shall be established with the cooperation of the FGFWFC.

2. The annual scrub jay survey and habitat monitoring plan shall be submitted, reviewed, modified and approved by the FGFWFC.

3. Any exotic vegetation shall be removed from the preservation area during any burning or bush hogging of the area.

GOPHER TORTOISE

Management

1. Any bush hogging or other mowing which occurs in this management area shall be conducted to avoid impacts on gopher tortoises. Mowing shall be conducted during winter months on days when cool temperatures discourage gopher tortoises from leaving burrows. The mowers shall avoid collapsing gopher tortoise burrows or destroying burrow aprons. No mowing shall occur during the gopher tortoise nesting season, which is generally May through June.

2. Gopher tortoise fences along the project roadways must be

maintained in perpetuity to prevent the gopher tortoise population from wandering into vehicular traffic.

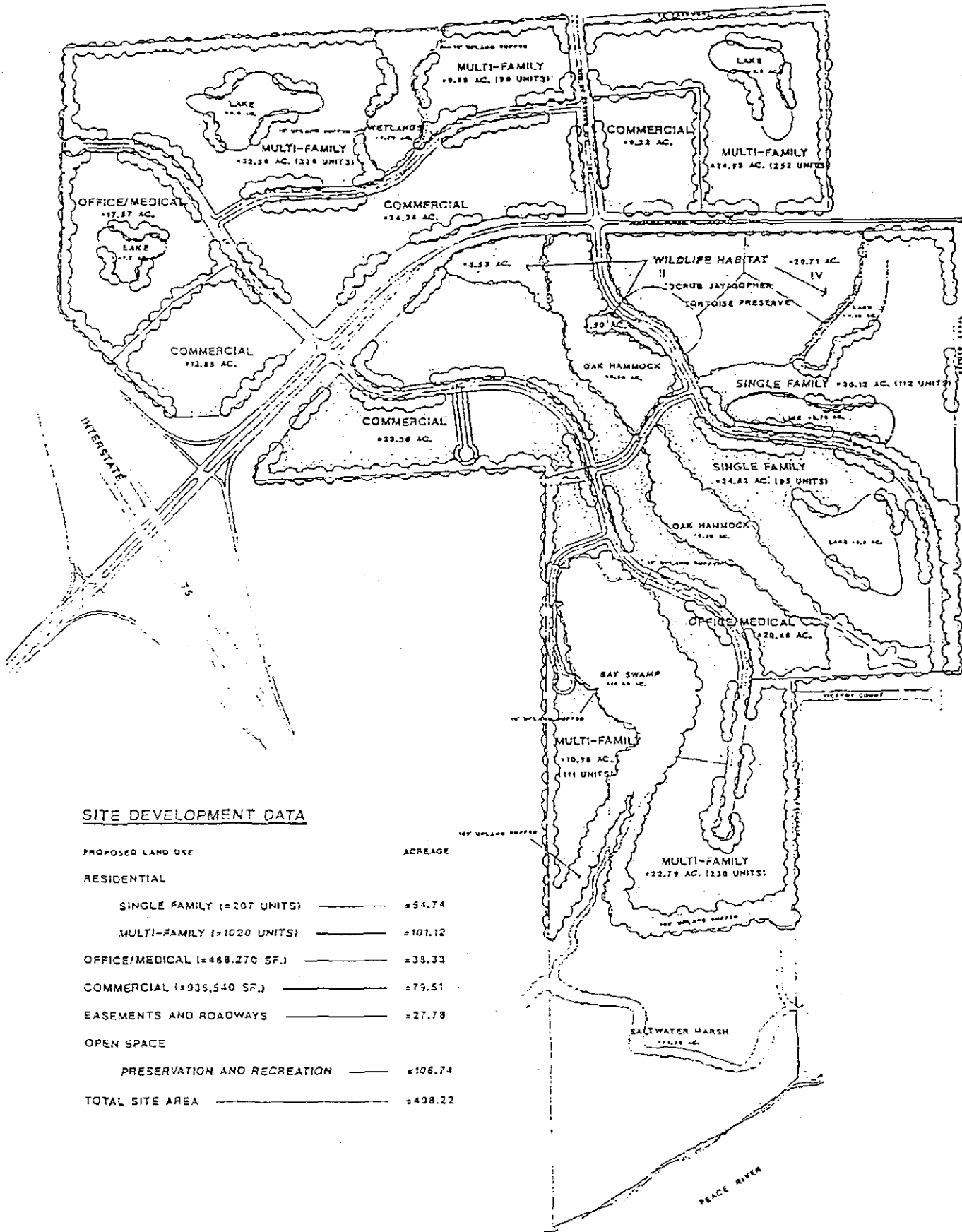
Monitoring

1. The scrub jay survey report required by the FGFWFC should include information on the gopher tortoise population in the preserve. This information should be included in the report in those years when prescribed burns are conducted on the site.

APPENDIX 1
TO EXHIBIT "C"

Recommended landscape plants (outside scrub jay/gopher tortoise preserve area) for Harborview Development of Regional Impact, Charlotte County, Florida:

Myrtle Oak
Sand Live Oak
Chapman's Oak
Runner Oak
Cabbage Palm
Saw Palmetto
Sea Grape
Paw Paw
Sparkleberry
Dahoon Holly
Wax Myrtle
Florida Cootie
Lantana
Blue-eyed Grass
Balloon Vine
Gopher Apple
Wiregrass



SITE DEVELOPMENT DATA

PROPOSED LAND USE	ACREAGE
RESIDENTIAL	
SINGLE FAMILY (=207 UNITS)	=54.74
MULTI-FAMILY (=1020 UNITS)	=101.12
OFFICE/MEDICAL (=468,270 SF.)	=38.33
COMMERCIAL (=936,540 SF.)	=79.51
EASEMENTS AND ROADWAYS	=27.78
OPEN SPACE	
PRESERVATION AND RECREATION	=106.74
TOTAL SITE AREA	=408.22

ARBORVIEW

DEVELOPMENT OF REGIONAL IMPACT
APPLICATION FOR DEVELOPMENT APPROVAL

DEVELOPER EUGENE M. GRANT & CO., TRUSTEE 200 PINE AVENUE, SUITE 1100 NEW ORLEANS, LOUISIANA 70112 (504) 582-8888	PLANNING CONSULTANT WANKELMAN SWEN & ASSOCIATES 100 MAGNOLIA CLUB, SUITE 210 PUNTA GORDA, FLORIDA 33450 (813) 875-8888	MASTER DEVELOPMENT PLAN	
ENGINEER CHARLOTTE ENGINEERING & SURVEYING 1700 AL. STREET, SUITE 1000 AVON LAKE, OHIO 44014 (440) 933-1111	ENVIRONMENTAL CONSULTANT ENVIRONMENTAL PERMITTING & PLANNING 400 1ST STREET PUNTA GORDA, FLORIDA 33450 (813) 875-8888	DATE SUBMITTED: 10/1/88 REVISION: 10/1/88 SHEET NO. 10/1/88	SCALE: 1" = 100' ± 11/17

