



Council Communication

To: Mayor and Village Council
From: Jennifer DeBoisbriand , Planning Director
Date: September 11, 2025
SUBJECT: **Reconsideration of Administrative Appeal - Transfer of Development Rights**

Background:

The subject application involved an Appeal of an Administrative Determination pursuant to Sec. 30-281 of the Village Code. Specifically, the applicant sought an appeal of the determination of the Planning Director to deny the transfer of a development right (TDR) from 81912 Overseas Highway (sender site) to 82601 Old Highway (receiver site). Both properties are located on Upper Matecumbe Key.

The sender site is located on the west side of Overseas Highway, Upper Matecumbe Key. The sender site is zoned Village Center (VC). The receiver site is located on the east side of Old Highway on Upper Matecumbe Key just over a half of a mile north of the sender site. The site is currently vacant and has single-family homes on either side. Across Old Highway are a variety of uses on properties zoned Village Center (VC). The receiver site maintains a lot area of approximately 2 acres. Both the sender and receiver sites are shoreline properties.

An application requesting a Transfer of Development Rights was filed with the Department of Planning and Development Services on January 4, 2023. After review, it was determined that the "proposed TDR does not meet the criteria set forth in Sec. 30-504(b). The proposed receiver site contains Class I habitat (hammock) and Class II habitat (disturbed hammock and disturbed beach or berm), and the proposed sender site contains Class III habitat (disturbed). Based upon the habitat analysis, on January 27, 2023, a denial of the proposed transfer of development rights was issued by the Department of Planning and Development Services. On April 13, 2023, the village Council overturned the Planning Director's denial and approved the transfer with conditions. All the conditions were proffered by the applicant's representative.

Analysis:

It is the staff's understanding that the condition of concern is Condition #4, which states "The proposed single-family residence will be consistent with the plans submitted to the Village in connection with the pending Building Permit Allocation System (BPAS) application." We would refer Council to the video recording of the April 13, 2023, Council meeting at about 1 hour 15 minutes and 27 seconds. At that time, there began a discussion of habitat protection. The applicant's representative discusses the design of the house and the entrance being on the opposite side of the hammock to avoid it. At approximately 1 hour 26 minutes and 54 seconds, Councilwoman (now Mayor) Mahoney asked the applicant's representative

what size home they were going to build. He referenced the plans in BPAS and stated it was around 4,00 sf and joked that "it's not 10. I can tell you that much". At approximately 2 hours 17 minutes and 43 seconds, Councilman Gregg asked if they were intending to proceed with construction along the lines of the BPAS application. The applicant's representative stated yes. Councilman Gregg then said that this would have the effect of a "BPAS" approval with conditions. It is staff's belief that this was a proffered condition of approval.

Budget Impact:

None

Staff Impact:

None

Recommendation:

Based on the review of the record, staff recommends no change to the recorded resolution.

- Attachments:**
1. PLADA20230026_Staff Report_w_Attachments
 2. 04132023_RVCM Minutes
 3. Recorded_Resolution
 4. Reso_PLADA20230026 Reconsideration



Council Communication

To: Mayor and Village Council
From: Jennifer DeBoisbriand , Planning Director
Date: March 2, 2023
SUBJECT: **Administrative Appeal - Transfer of Development Rights**

Background:

The subject application involves an Appeal of an Administrative Determination pursuant to Sec. 30-281 of the Village Code. Specifically, the applicant is seeking an appeal of the determination of the Planning Director to deny the transfer of a development right (TDR) from 81912 Overseas Highway (sender site) to 82601 Old Highway (receiver site). Both properties are located on Upper Matecumbe Key.

The sender site is located on the west side of Overseas Highway, Upper Matecumbe Key. The sender site is zoned Village Center (VC). The receiver site is located on the east side of Old Highway on Upper Matecumbe Key just over a half of a mile north of the sender site. The site is currently vacant and has single-family homes on either side. Across Old Highway are a variety of uses on properties zoned Village Center (VC). The receiver site maintains a lot area of approximately 2 acres. Both the sender and receiver sites are shoreline properties.

An application requesting a Transfer of Development Rights was filed with the Department of Planning and Development Services on January 4, 2023. After review, it was determined that the “proposed TDR does not meet the criteria set forth in Sec. 30-504(b). The proposed receiver site contains Class I habitat (hammock) and Class II habitat (disturbed hammock and disturbed beach or berm), and the proposed sender site contains Class III habitat (disturbed).” Based upon the habitat analysis, on January 27, 2023, a denial of the proposed transfer of development rights was issued by the Department of Planning and Development Services.

Analysis:

The Transfer of Development Rights is guided by Chapter 30, Article IV, Division 12 (Transfer of Development Rights) of the Village Code. It establishes specific standards which both limit and guide the transfer of development rights. The Code contains standards that limit the transfer of development rights based upon zoning, habitat classification and the adjacency to shoreline. In this instance, the question involves whether the transfer violates the standards pertaining to the sender and receiver parcels’ habitat classification. Specifically, whether the development right can be transferred from a lot containing Class III Habitat (disturbed) to a lot containing Class I Habitat (hammock) and Class II Habitat (disturbed hammock and disturbed beach or berm).

Village Code Sec. 30-501 establishes the purpose and intent of the TDR program. It states:

“The intent and purpose of this division is to permit and regulate the transfer of development rights (TDRs) between properties within the village in order to ensure that all development is consistent with the goals, objectives, and policies of the comprehensive plan. Transfer of development rights will aid in the preservation of environmentally sensitive lands through the removal of existing dwelling units or rights based on permitted densities, the redistribution of existing residential dwelling units to achieve planned densities, the retirement of development rights without increasing the overall amount of development, the encouragement of the placement of conservation easements on environmentally sensitive and flood-prone lands, the facilitation of appropriate redevelopment and revitalization of the village center (VC) zoning district by the concentration of mixed use activities, the preservation of existing affordable housing and encouragement of additional affordable housing, and a reduction of negative environmental impacts from development in balance with protection of private property rights.”

Transfer of development rights include the transfer of residential development credits, non-residential development rights and the transfer of lot intensity or lot area. In this instance, the application is seeking to transfer a residential development credit. Single family residential development is a permitted use in both Village Center (VC) and Residential Estate (RE).

However, the Code also provides restrictions on the transfer of development rights between different Habitat Classifications. Specifically, the Code prohibits the transfer of development rights from less environmentally sensitive properties to more environmentally sensitive properties. Sec. 30-504 (b) specifically states:

The receiver site shall be less environmentally sensitive than the sender site, according to a vegetation survey and/or a habitat analysis conducted by a certified biologist, and verified unless otherwise exempted or limited by the director of planning and development services or his designee, pursuant to habitat classifications described in subsection 30-1616(b)(2) of this Code, whereby the following conditions additionally apply:

- (1) Transfer shall be permitted from Class I parcels to Class II or Class III parcels;
- (2) Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and
- (3) Transfer shall be permitted from Class III parcels to Class III parcels.

The sender site associated with the subject application is classified as Class III Habitat or “disturbed.” However, the receiver site has been classified as a Class I (hammock) and Class II property (disturbed hammock and disturbed with beach or berm). The applicant provide the Village with Environmental Assessment and Vegetation Surveys for both sites completed by the same environmental consultant. As a result, the request for a transfer of development rights was denied by the Department of Planning and Development Services.

Administrative Appeals are governed by Village Code Sec. 30-281 (Administrative Appeals). According to the Code, “Any person aggrieved by an administrative decision or interpretation of the director of planning and development services, the building official or other village administrative official regarding the provisions of this chapter may appeal such decision or interpretation. The appeal shall be initiated within 30 days of the date of receipt by the aggrieved person of mailed, or posted, or published notice of the administrative decision or interpretation by filing an appeal with the director in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by an application fee that is established by the village council from time to time to defray the

actual cost of processing the appeal. Failure to file an appeal within the timeframe specified, and exhaust all administrative remedies provided for in this chapter, shall constitute a waiver of all rights to appeal any interpretation or determination made by the village.”

According to Sec. 30-281 (d), “The village council in reviewing the appeal under this section shall presume the original decision of the director, building official or other administrative official was correct and shall only overturn such decision where there has been an error of fact or law.”

The code also establishes three (3) factors to be considered by the Village Council when reviewing an appeal. In no event, however, shall an appeal be approved which fails to meet any standard below. Failure to comply with any standard shall be deemed adverse to the public interest. A review of these factors follows:

(1) The appeal is consistent with the purposes, goals, objectives and policies of the comprehensive plan;

The purpose and intent of the prohibition on the transfer of development rights from less environmentally sensitive properties to more environmentally sensitive properties is to protect the region’s invaluable environmental resources. The need to protect the region’s environmental resources is reflected throughout the purpose and intent of the state-designated Area of Critical State Concern. This includes, but is not limited to, the following:

- ☐ Establish a land use management system that protects the natural environment of the Florida Keys.
- ☐ Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys.
- ☐ Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11), as applicable.

The protection of the environmental resources within the Village is also contained within several areas of the Village Comprehensive Plan. This includes, but is not limited to, the following:

1-1 Future Land Use Goals, Objectives and Implementing Policies.

- ☐ That the Village incorporated to create a Comprehensive Plan to reclaim the Keys by conserving, preserving, and retaining our remarkable assets — our waters and natural environment — and our quality of life;
- ☐ That the Village is and must continue to be synonymous with sport fishing, diving, the Everglades National Park, the living coral reef, Indian Key, Lignumvitae Key, Shell Key, Windley Quarry, and many species of fish and fowl;
- ☐ That the Comprehensive Plan must further understanding of the ecological limits of our Keys and prohibit any further degradation of our natural resources by incompatible land and marine activities such as casino boats, sea planes, personal watercraft, and other watercraft

that are operated improperly; and

- That the Comprehensive Plan must describe public and private actions needed to protect and retain the Village's waterways and natural resources comprising our unique ecosystem as well as preserve the quiet solitude of the backcountry.
- Provides a sound basis for developing land use controls that ensure acceptable levels of service for hurricane evacuation, protect coastal resources, including nearshore waters, wetlands, grassbed flats, mangroves, as well as hammocks, and establish a basis for managing landscaping, signage, parking, drainage, and water quality;
- Relies on ecological constraints to establish limits for growth and create standards and criteria to ensure that human induced activities do not diminish assets of our unique coastal environment; and
- Ensures that the character and location of land uses incorporate best management practices and principles of resource conservation, promote orderly land use transition, and minimize threats to health, safety, and welfare which may be caused by incompatible land uses, environmental degradation, hazards and nuisances.

The transfer of a development right from a Class III disturbed lot (sender site) to a receiver lot with Class I (hammock) and Class II Habitat (disturbed hammock and disturbed with beach or berm) is inconsistent with the purpose and intent of both the Area of Critical State Concern and the Village Comprehensive Plan. It is also specifically prohibited by the TDR guidelines contained in Sec. 30-504 (b).

(2) The appeal complies with all relevant and appropriate portions of this chapter; and

The Administrative Appeal has been submitted in compliance with the guidelines contained within this Chapter.

(3) There was an error of fact or law in the decision of the director, building official or other administrative official.

The applicant provided the environmental assessments for both sites and therefore has not challenged the basic Habitat Classification of either site. The applicant is challenging that because the Receiver site has multiple classifications, it should not be classed as a Class I or Class II. However, I refer you back to Section 30-504 (b) of the Village Code. This section specifically calls out the types of parcels which qualify for transfer. Not portions of a parcel, not areas of habitat. Therefore, it is the belief of this Department that the Habitat Classification of the receiver site is accurate and does not represent an error of fact or law.

Budget Impact:

None

Staff Impact:

None

Recommendation:

Based upon the above, it is the belief of this Department that the proposed TDR is inconsistent with the guidelines contained in Division 12 – Transfer of Development Rights. Specifically, the proposed TDR seeks to transfer a development right from a less environmentally sensitive property Class III habitat (disturbed) to a more environmentally sensitive property (Class I (hammock) and Class II Habitat [disturbed hammock and disturbed with beach or berm]).

In addition, the proposed request for an Administrative Appeal of the denial of the proposed TDR, fails to meet the standards contained within Division 4 – Administrative Appeals. Specifically, the applicant has failed to establish an error of fact or law that would support the overturning of the determination of the Department. As noted previously, the failure to meet any of the factors contained in Sec. 30-281 (e) shall result in the denial of the appeal. “In no event, however, shall an appeal be approved which fails to meet any standard” contained in the code.

The Department of Planning and Development Services respectfully recommends DENIAL of the proposed Administrative Appeal.

Attachments:

1. Reso_PLADA20230026
2. Receiver_Habitat
3. Sender_Habitat1
4. Appeal_Doc

Vegetation Survey &
Restoration Plan

Legal

Strattons Subdivision
Block 12, Lot 6

Address

82601 Old Highway
Islamorada

Real Estate Number

00401260-000000

October 25, 2020

71 Tingler Lane, Marathon, FL 33050
julie_cheon@hotmail.com
Phone (305) 395-1985

Background:

The following report was completed to document the habitat and vegetation for the proposed development of a single family residence on above referenced property. The report includes a site description, a vegetation map indicating the location and size of protected species in the construction footprint and 20' buffer area, a species list and site photos. It also identifies species that will be impacted by the proposed development and provides a mitigation table and replanting map.

A site visit was completed on October 17, 2020.

Site Description:

The property is bordered on the east and west by developed parcels, on the south by open water and on the north by a paved road, Old Highway. For purposes of this report the front of the parcel is considered that which borders the Old Highway.

The existing habitat onsite was previously delineated in a report by others. A copy of the report is provided in Attachment H. The report notes that the approximately 76,345 sf parcel contains Hammock, Disturbed Hammock, Disturbed and Disturbed with Beach Berm habitats. A delineation by others is included on the site plan.

The Hammock and the Disturbed Hammock is located along the front of the property. This area transitions into a disturbed area that is heavily infested with exotic and invasive exotic vegetation. The disturbed area then transitions to a disturbed beach berm.

The house, swale and drive have been situated to utilize the most disturbed areas of the parcel. The house and swale have been located to avoid impacting all protected vegetation. The drive is situated to cross the disturbed hammock area. Due to the extensive amount of vegetation onsite that will be avoided, the vegetation survey was completed along the construction footprint and a twenty-foot buffer area.

Species of Note:

The dominant native vegetation in the construction footprint and twenty-foot buffer includes Buttonwood, Jamaican Dogwood, Blackbead and Florida Thatch Palm.

A complete list of species located onsite can be found in Attachment F – Species Table. Attachment D – Mitigation Table, lists the protected species to be impacted and provides the required replanting numbers.

Mitigation Requirements:

All listed species require mitigation if impacted by development and have been tagged with orange tape. A vegetation map (Attachment C) showing the locations of all listed species, all species greater than 3.5" dbh, and all relevant features is attached. Please note that locations are approximate.

Appropriate permits must be obtained from the Village of Islamorada prior to removal of any vegetation. Please consult the Islamorada Environmental Planning Department for specific requirements.

The following criteria are required to be met on parcels classified as Disturbed with Tropical Hardwood Hammock.

- All listed threatened, endangered, commercially exploited, and regionally important native plant species shall be preserved, protected, relocated or replaced with the same species or equally rare species suitable to the site in accordance with [section 30-1615](#);
- All specimen and champion trees shall be preserved in their natural condition;
- All non-invasive or native trees greater than 3 ½ dbh shall be preserved, protected, relocated or replaced in accordance with [section 30-1615](#);
- All areas of disturbance shall be managed to avoid the introduction and/or establishment of invasive exotic species; and
- All invasive exotic species shall be removed from the parcel proposed for development.

Mitigation/Planting Plan Notes:

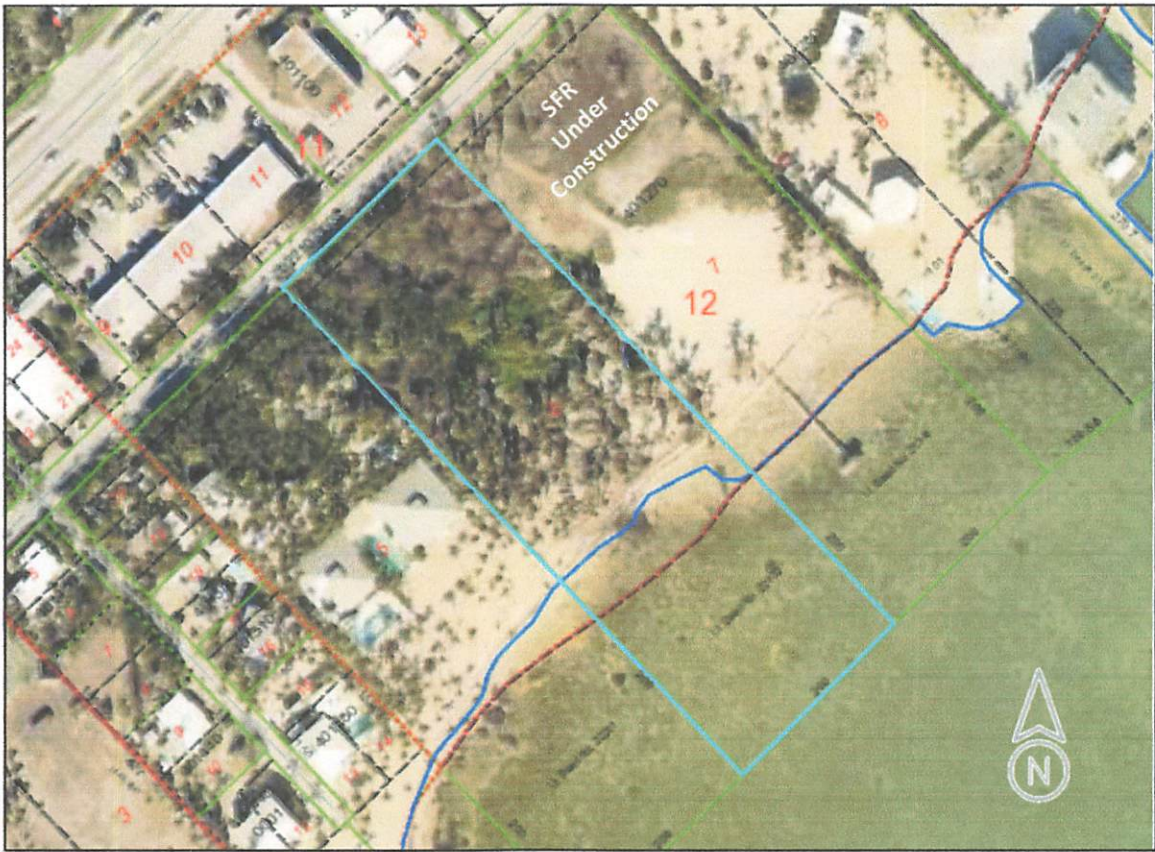
General Notes

- Species listed as endangered, threatened or regionally important must be replaced at a minimum ratio of 1:1 of similar size and maturity.
- Replacement trees shall be at least eight feet in height, three inches dbh, and consist of non-invasive species pursuant to the standards contained in this division. The director of planning and development services may reduce the height requirement up to 50 percent for rare native plant species.
- All native palms and shrubs replaced shall be of the same size and species, or similar species, as the plants removed.

- Nursery stock of 24 inches in height may be substituted at the ratio of three plants for every one plant proposed for removal as may be approved by the director of planning and development services.
- Nursery stock shall be of the same species whenever possible, or equally rare species as approved by the director of planning and development services.
- All conditions of Section 30-1615 of the Village of Islamorada Code must be adhered to.

Please feel free to direct any questions regarding this report to the author at the above referenced contacts.

Attachment A – Location Aerial

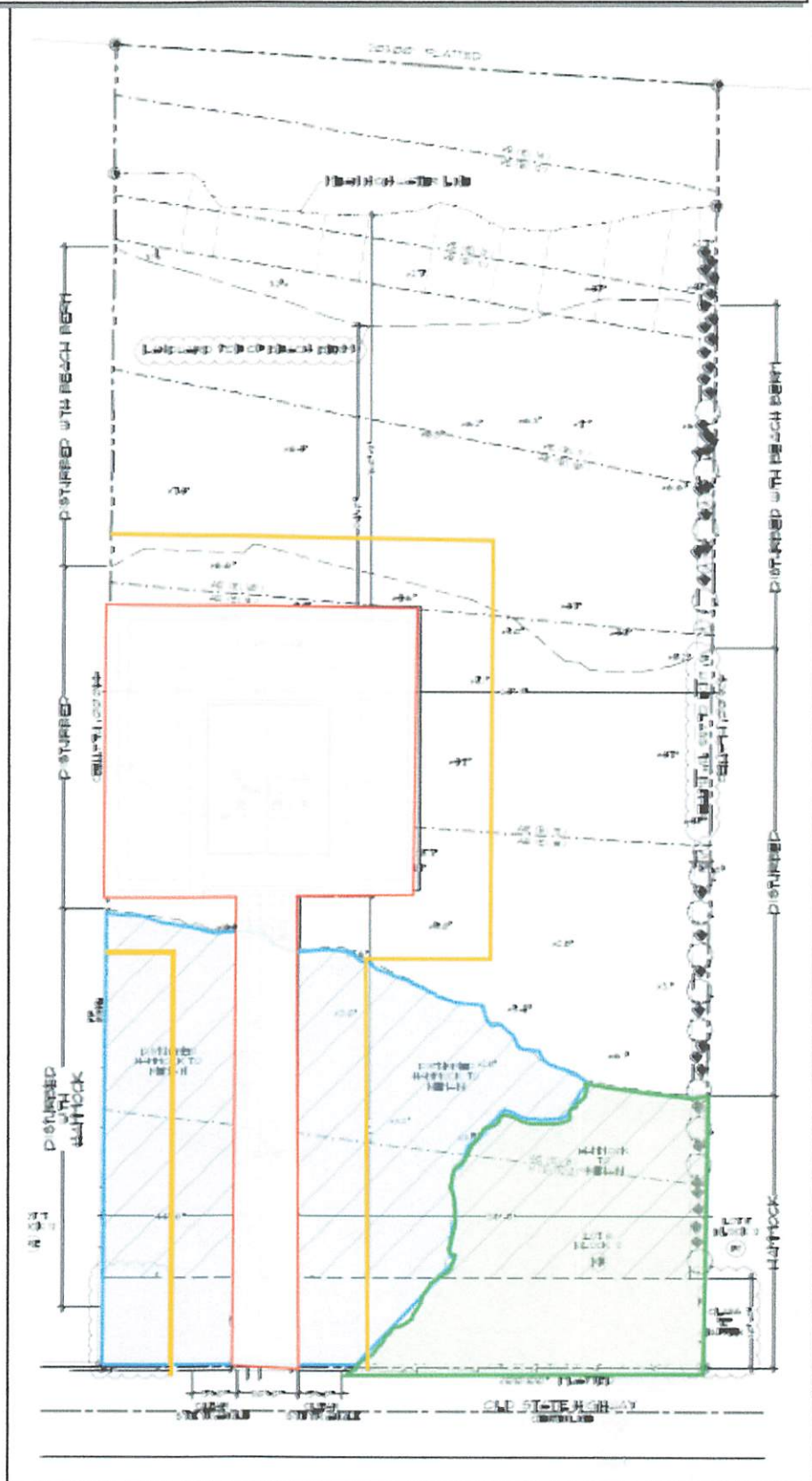


Attachment B – Site Plan Showing Survey Area

Key

- = Construction Footprint
- = 20' Survey Buffer

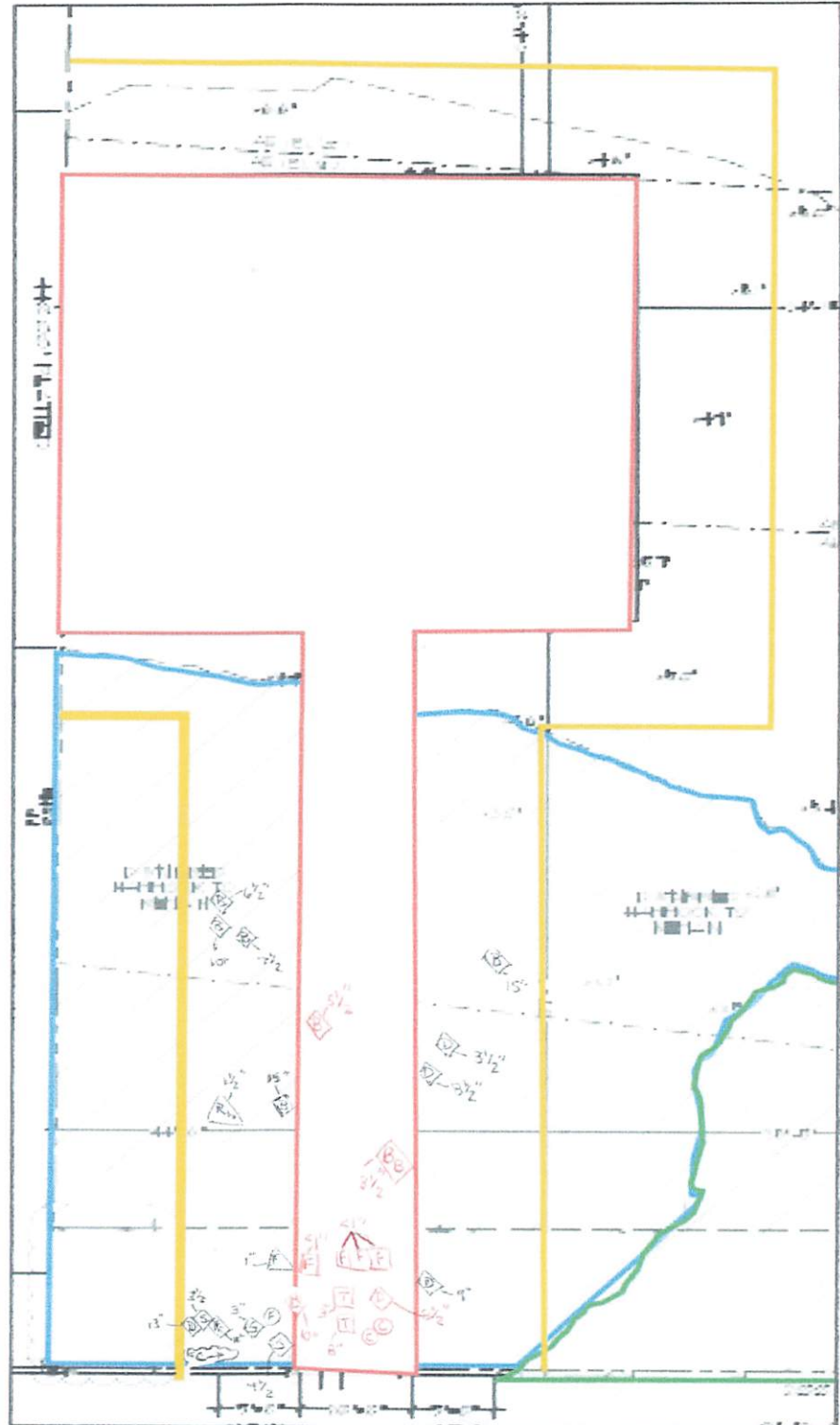
Not to Scale



Attachment C - Vegetation Map / Survey Area

Not to Scale

See Species List
for Specimen
Key

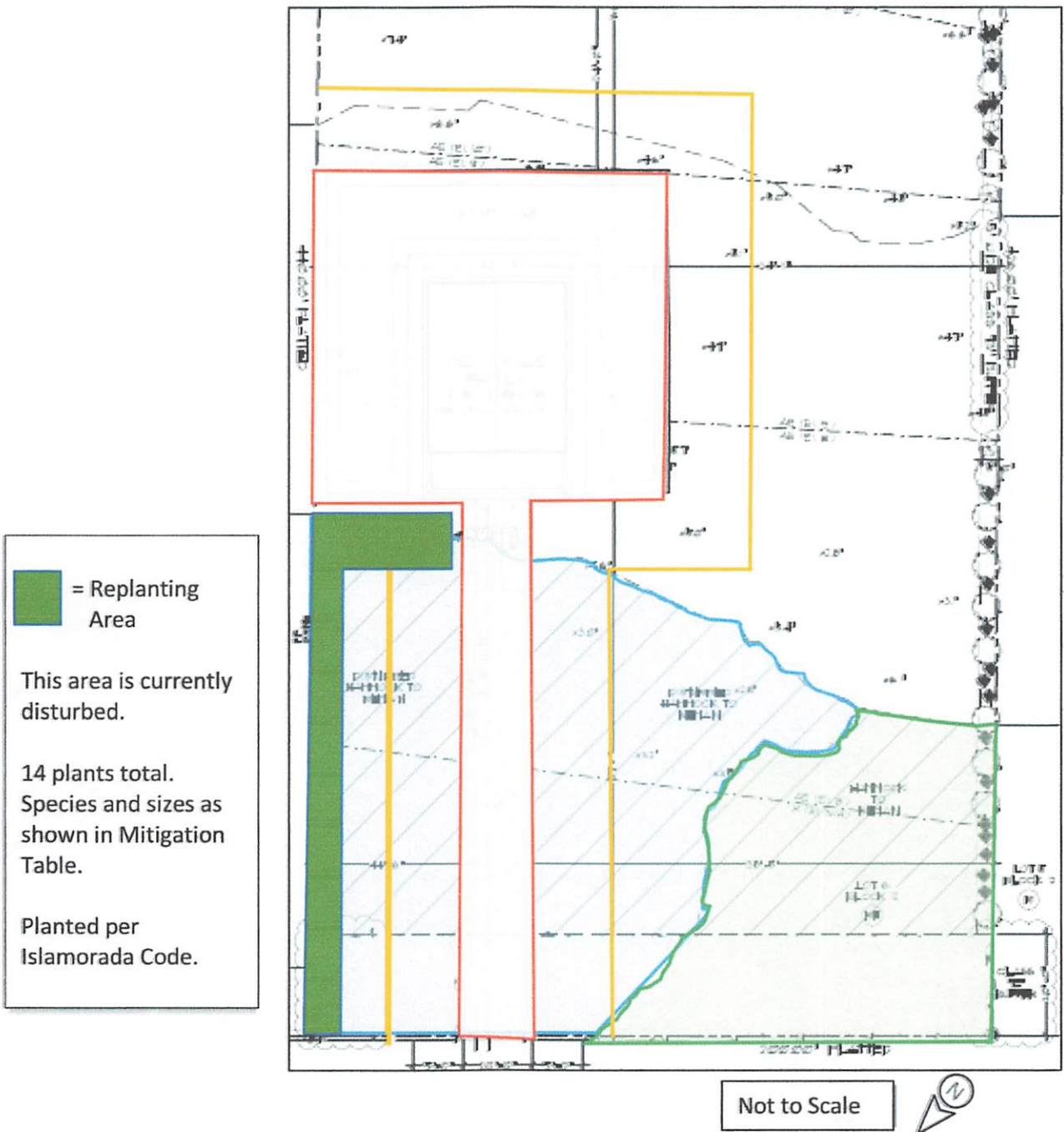


Old Highway

Attachment D – Impacted Non-Invasive/Native Species Greater than 3.5" dbh.

<u>Symbol</u>	<u>Scientific Name</u>	<u>Common Name</u>	<u>Status</u>	<u>Diameter</u>	<u>Replacement</u>	<u>Size</u>
B	<i>Conocarpus erectus</i>	Buttonwood - Green	N>3.5"	5.5"	1	
		TOTAL	Buttonwood		1	8' Min Height
B _B	<i>Pithecellobium guadalupense</i>	Blackbead	N>3.5"	3.5"	1	
		TOTAL	Blackbead		1	8' Min Height
C	<i>Jacquemontia pentanthos</i>	Sky Blue Clustervine	END	1 vine	1	
C	<i>Jacquemontia pentanthos</i>	Sky Blue Clustervine	END	1 vine	1	
		TOTAL	Cluster Vine		2	1-gallon pot
D	<i>Piscidia piscipula</i>	Jamaican Dogwood	N>3.5"	8.5"	2	
D	<i>Piscidia piscipula</i>	Jamaican Dogwood	N>3.5"	10"	2	
		TOTAL	Dogwood		4	8' Min Height
F	<i>Piscidia piscipula</i>	Florida Privet	RI	<1"	1	
F	<i>Piscidia piscipula</i>	Florida Privet	RI	<1"	1	
F	<i>Piscidia piscipula</i>	Florida Privet	RI	<1"	1	
F	<i>Piscidia piscipula</i>	Florida Privet	RI	<1"	1	
		TOTAL	Florida Privet		4	5-gallon pot
T	<i>Thrinax radiata</i>	FI Thatch Palm	END	3" clear trunk	1	
T	<i>Thrinax radiata</i>	FL Thatch Palm	END	8" cleat trunk	1	
		TOTAL	FI Thatch Palm		2	15-gallon pot
TOTAL Specimen to be Planted					14	

Attachment E - Replanting Plan



Attachment F - Species List

Scientific Name	Common Name	Status	Map Symbol
<i>Abutilon perfoliatum</i>	Coastal Indian Mallow	N	
<i>Bidens Alba</i>	Beggar Ticks	N	
<i>Bourreria succulenta</i>	Strongback/Strongbark	END	
<i>Bumelia celastrina</i>	Saffron Plum	N	
<i>Bursera simaruba</i>	Gumbo Limbo	N	
<i>Canavalia rosea</i>	Beach Pea / Bay Bean	N	
<i>Capparis cynophallophora</i>	Jamaica Caper	SR	
<i>Capparis flexuosa</i>	Limber Caper	SR	
<i>Capraria biflora</i>	Goatweed	N	
<i>Casuarina equisetifolia</i>	Australian Pine	IEX	
<i>Cenchrus spp</i>	Sandspur	N	
<i>Coccoloba diversifolia</i>	Pigeon Plum	N	
<i>Coccoloba uvifera</i>	Seagrape	N	
<i>Cocos nucifera</i>	Coconut Palm	ex	
<i>Commelina erecta</i>	Whitemouth Dayflower	N	
<i>Conocarpus erectus</i>	Green Buttonwood	N	B
<i>Crossopetalum rhacoma</i>	Rhacoma	END	R _h
<i>Cyperus ligularis</i>	Bull Rush/ Swamp Flat Sedge	N	
<i>Dactyloctenium aegyptium</i>	Crowfootgrass	ex	
<i>Delonix regia</i>	Royal Poinciana	ex	
<i>Dioscorea bulbifera</i>	Air-potato	IEX - Cat 1	
<i>Distichlis spicata</i>	Salt Grass	N	
<i>Eugenia foetida</i>	Spanish Stopper	N/SR	S
<i>Exothea paniculata</i>	Inkwood	RI	
<i>Ficus aurea</i>	Strangler Fig	N	F _c
<i>Ficus citrifolia</i>	Shortleaf Fig	N	
<i>Forestiera segregata</i>	Florida Privet	RI	F
<i>Galactia regularis</i>	Eastern Milkpea	N	
<i>Guapira discolor</i>	Blolly	N	
<i>Heliotropium Angiospermum</i>	Scorpiontail	N	
<i>Heliotropium gnaphalodes</i>	Sea Lavender	E	
<i>Herissantia crispa</i>	Bladder Mallow	N	
<i>Ipomoea cordatotriloba</i>	Tie Vine	N	
<i>Ipomoea indica</i>	Oceanblue Morning Glory	N	
<i>Ipomoea pes-caprae</i>	Railroad Vine	N	
<i>Jacquemontia pentanthos</i>	Skyblue Cluster Vine	END	C
<i>Melanthera nivea</i>	Snow Squarestem	N	
<i>Metopium toxiferum</i>	Poisonwood	N	
<i>Morinda royoc</i>	Mouse's Pineapple	N	

<i>Myriopus volubilis</i>	Soldier Vine	N	
<i>Passiflora suberosa</i>	Corkstem Passionflower	N	
<i>Phyla nodiflora</i>	Matchweed	N	
<i>Piscidia piscipula</i>	Jamaican Dogwood	N	D
<i>Pithecellobium guadalupense</i>	Blackbead	N	B ₈
<i>Pluchea spp.</i>	Fleabane	N	
<i>Randia aculeata</i>	Randia/White Indigo Berry	SR	
<i>Reynosa septentrionalis</i>	Darling Plum/Red Ironwood	T	
<i>Ricinus communis</i>	Castor Bean	IEX - Cat 2	
<i>Rivina humilis</i>	Rouge Plant	N	
<i>Sansevieria hyacinthoides</i>	Mother-in-Law Tongue	ex	
<i>Schinus terebinthifolia</i>	Brazilian Pepper		
<i>Sesbania herbacea</i>	Danglepod	N	
<i>Sesuvium portulacastrum</i>	Seapurslane	N	
<i>Sida ciliaris</i>	Fringed Fanpetals	N	
<i>Sideroxylon foetidissimum</i>	Mastic	RI	
<i>Smilax havenensis</i>	Cat Brier	T	
<i>Solanum americanum</i>	American Black Nightshade	N	
<i>Solanum bahamense.</i>	Bahama Nightshade	N	
<i>Suriana maritima</i>	Bay Cedar	N	
<i>Swietenia Mahagoni</i>	Mahogany	END	
<i>Thespesia populnea</i>	Portia Tree	ex	
<i>Thrinax radiata</i>	Florida Thatch Palm	END	T
<i>Waltheria indica</i>	Sleepy Morning	N	
<i>Zanthoxylum fagara</i>	Wild Lime	N	
	Exotic landscape palms	ex	
	Misc. Grass & herbs		

Key ~ Status

CE	Commercially Exploited	All Protected
ex	Exotic	non-native (may be naturalized)
END	Endangered	All Protected
IEX	Invasive Exotic	Removal Prior to CO Required
N	Native	> 4" dbh protected
RI	Regionally Important	All protected
T	Threatened	All Protected

Attachment G - Site Photos



House Location – Center Looking East



House Location – Center Looking West



Shoreline



Hammock – West Side of Property

Attachment H - Vegetation survey By Others



environmental
CONSULTING SYSTEMS, inc.
biological assessments • land use planning • impact analysis

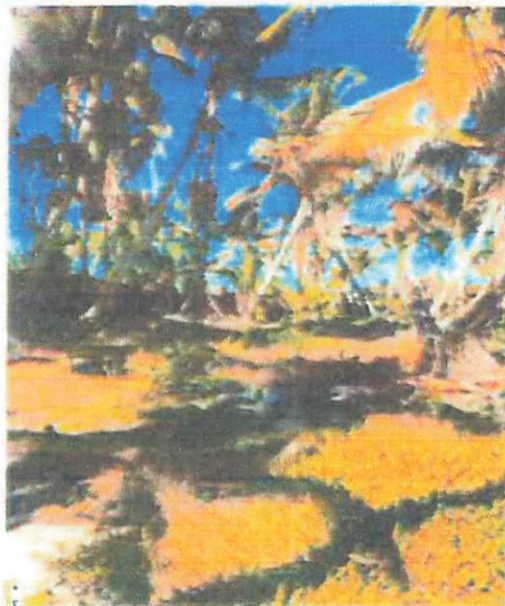
VEGETATION SURVEY

PURSUANT TO SECTION 30-1614 (c) & SECTION 30-1615
ISLAMORADA, VILLAGE OF ISLANDS LAND DEVELOPMENT CODE

Legal Description of Parcel:					
Block	Lot	Subdivision	Key (island)	Plat Book/Page	Re #
12	6	Stratton's	Plantation Key	2/38	00401260-000000
Location: Vacant: Old Highway MM 82.6 Oceanside					
Islamorada Building Permit Application Number:				NA	
Property Owner (Last Name, First Name):			Address (Mailing address for Owner):		
[REDACTED]			[REDACTED]		
Report Date:			Date(s) of site visit(s):		
22 January 2019			21 & 22 January 2019		
Name of Biologist:		Affiliation:	Phone:	(305) 852-1920	
Susan V. Sprunt		E.C.S., Inc.	E-mail:	susan@susansprunt.com	
Signature:		[Handwritten Signature: Susan V. Sprunt]			

I. SUMMARY

This vegetation survey was conducted on a vacant parcel located along the Old Highway on Upper Matecumbe Key, Oceanside, Mile Marker 82.6. The site had three major areas of habitat with varying degrees of disturbance. First, from the Mean High-Water Line (MHWL) into the parcel approximately 140 feet was a solid stand of coconut trees. Sparse non-native vegetation was found ranging in height from 3-4 feet throughout this area. Australian pine (*Casuarina equisetifolia*) was the primary non-native found with some scattered portia (*Thespesia populnea*). The majority of vegetation was native, with the exception of the coconut palms.



Coconut palms - looking N/NE

Directly behind and adjacent to the coconut palm area a sparse opening of vegetation was found consisting mostly of the non-native castor bean (*Ricinus communis*). However, in and among the castor bean was a large amount of the native beach pea vine (*Canavalia rosea*). This vine was growing on the ground and up and around the castor bean. On the Southern perimeter there were more coconut trees and scattered native canopy trees such as Jamaica dogwood and green buttonwood. In addition, a sand path was found that merged into a lime rock fill/gravel driveway that appears to be utilized by the adjacent property (see Vegetation Site Plan, Pages 5 & 6). The pathway appears to have been man-made some time ago with fill and debris visible on either side of the opening. A few non-native canopy trees of Brazilian pepper (*Schinus terebinthifolia*) were found on either side of the man-made pathway that appeared to be in distress or completely dead. The majority of the vegetation just beyond the fill/debris appeared to be native with very little non-native species found (see Vegetation Site Plan, Page 6).

The vegetation in the southwestern portion of the site adjacent to the Old Highway consisted mostly of native habitat with very little non-native species present. The only disturbance appeared to be the open areas adjacent to the Old Highway as well as a thin strand of non-native snake plant (*Dracaena hyacinthoides*) approximately 3-4 feet wide (see Vegetation Site Plan, Page 6). Three large native canopy trees have been blown down, likely during Hurricane Irma, two of which are still living. The removal of the large canopy trees has created an opening and many native species have begun to grow, namely the sky blue clustervine (*Jacquemontia pentanthes*).

The northeastern corner adjacent to the Old Highway and the entire northern perimeter contain the majority of the non-native species (see Vegetation Site Plan, Pages 5 & 6). Two very large Australian Pine trees were found in this area along with several native canopy trees (see Vegetation Site Plan, Page 6). A solid stand of mostly dead Brazilian pepper (*Schinus terebinthifolia*) was found along the northern perimeter. Directly behind the dead pepper there were more native canopy trees seen mostly of green buttonwood (*Conocarpus erectus*). The green buttonwood was entangled within the dead vegetation.

Locations of all areas and plants on the Vegetation Site Plan were estimations only and exact locations should be verified by a boundary survey.

II. Plant Species List

Common Name	Scientific Name	Status	Location
Air-potato	<i>Dioscorea bulbifera</i>	INV - Cat 1	
Australian Pine	<i>Casuarina equisetifolia</i>	INV - Cat 1	
American Black nightshade	<i>Solanum americanum</i>	N	
Bahama nightshade	<i>Solanum bahamense</i>	N	
Bay cedar	<i>Suriana maritima</i>	N	Berm area
Beach Pea/ BayBean	<i>Canavalia rosea</i>	N	Berm area
Blackbead	<i>Pithecellobium guadalupense</i>	RI	throughout
Bladder Mallow	<i>Herissantia crispa</i>	N	
Blolly	<i>Guapira discolor</i>	N	
Blood berry	<i>Rivina humilis</i>	N	
Buttonwood, Green	<i>Conocarpus erectus</i>	N	
Caper, Jamaica	<i>Quadrella cynophallophora</i>	N	
Castor Bean	<i>Ricinus communis</i>	INV-Cat 2	Berm area
Creeping Charlie	<i>Phyla nodiflora</i>	N	
Darling Plum	<i>Reynosa septentrionalis</i>	T	Native area
Day Flower	<i>Commelina erecta</i>	N	
Dogwood, Jamaican	<i>Piscidia piscipula</i>	N	
Fig, Shortleaf	<i>Ficus citrifolia</i>	N	
Fig, Strangler	<i>Ficus aurea</i>	N	
Galactia vine	<i>Galactia spp.</i>	N	
Goatweed	<i>Capraria biflora</i>	N	
Grass, Crowsfoot	<i>Dactyloctenium aegyptium</i>	EX	
Grass, Sandspur	<i>Cenchrus echinatus</i>	N	
Greenbriar	<i>Smilax spp.</i>	N	
Gumbo Limbo	<i>Bursera simaruba</i>	N	
Inkwood	<i>Exothea paniculata</i>	RI	Native area
Lima, Wild	<i>Zanthoxylum fagara</i>	N	

Mahogany	<i>Swietenia mahagoni</i>	T	Native area
Mastic	<i>Sideroxylon foetidissimum</i>	RI	Native area
Melanthra	<i>Melanthra repa</i>	N	
Palm, Coconut	<i>Cocos nucifera</i>	EX	Berm area
Palm, Christmas	<i>Adonidia merrillii</i>	EX	
Palm, Florida thatch	<i>Thrinax radiata</i>	E	Native area
Passion Vine	<i>Passiflora suberosa</i>	N	
Pluchea	<i>Pluchea odorata</i>	N	
Poisonwood	<i>Metopium toxiferum</i>	RI	Native area
Portia	<i>Thespesia populnea</i>	INV-Cat 1	Berm area
Railroad vine	<i>Iopoea pes-caprae</i> subsp. <i>brasiliensis</i>	N	
Randi	<i>Ranida aculeata</i>		Native area
Royal Poinciana	<i>Delonix regia</i>	EX	
Saffron Plum	<i>Sideroxylon celastrinum</i>	N	Native area
Sea Grape	<i>Coccoloba uvifera</i>	N	
Sea Lavender	<i>Heliotropium gnaphalodes</i>	E	Berm area
Scorpion Tail	<i>Heliotropium angiospermum</i>	N	
Sesuvium	<i>Sesuvium portulacastrum</i>	N	Berm area
Sky vine Blue clustervine	<i>Jacquemontia pentanthos</i>	E	Native area
Snake Plant	<i>Dracaena hyacinthoides</i>	INV-Cat 2	
Spanish needles	<i>Bidens spp.</i>	N	
Soldier Vine	<i>Myriopus volubilis</i>	N	
Strongbark	<i>Bouyeria succulenta</i>	E	
Stopper, Spanish	<i>Eugenia foetida</i>	N	
Yellow Root	<i>Morinda royoc</i>	N	

KEY: T = Listed as Threatened by the State of Florida

N = Native species

EX = Non-native species

E = Listed as Endangered by the State of Florida

RI = Listed as Regionally Important by Islamorada, Village of Islands

Cat 1 & 2 = Category 1 & 2 Invasive Plant species: FLEPPC 2017

Vegetation Site Plan

Scale: 1" = 30'

Page 6 of 6

For:

RE: 00401260-000000

By:

ECS, Inc.

21 January 2019

AREA OF
SANDPAPERING
(TR.)

2 HUNDRED
AUSTRALIAN
PINES

DEPRESSION
AREA WITH
SAFARI PLUM

MAHOGANY
(30" DBH)
16X WOOD (10' HT)
MAHOGANY (8'3" DBH)

2 MASTIC (10' HT)

NORTH

Old State Road 4A

Map
Fnd.
EL 574

Cor. Fnd.
12'10" x 16'5"
Pole/cup fnd.
L887800

1500'
PLAN

x4.2'

200.10'

8-LEAF
FIG

DOWN
DOGWOOD

DOWN
MAHOGANY

DOWN
DOGWOOD

WILD
LIME

X 1/2" R/AO
AE (EL 80)

RED IRONWOOD
(2.11 DBH - 15' HT)

WHITE
MAHOGANY
(4' HT)

2 GUMBO LIMBO

F.P.
0.9' HE

BRAZILIAN PEPPER

DEAD

(SOME NON-WOODS)
BUT MOSTLY
GREEN
BUTTERNUT
(FNU)

OPEN AREA
- NATIVE -
SEY VINE
THROUGHOUT

NATIVE
AREA

2 THINAX PALMS

OLD TURBIDITY
SCREENS

(396.9' to MHVL)
440' Plot

375.00'

x6.5'

MATCH
LINE

3 LARGE GREEN
BUTTERNUT
TREES

B.L. O.C.K.

THIS AREA
COCONUT PALMS

Source:
Boundary Survey
Massy-Richards Surveying
Dwg No: 15419
Date: 1/23/19

OFFICE COPY









Environmental Assessment & Vegetation Survey

Location

Strattons Subdivision
Block 3, Lot 4

Address

81912 Overseas

Real Estate Number

00399300-000000

December 26, 2022

71 TINGLER LANE, MARATHON, FL 33050
JULIE_CHEON@HOTMAIL.COM
PHONE (305) 395-1985
FAX (305) 743-4587

Background:

The following report was completed to document the existing conditions and the Listed species onsite. The report was required by the Village of Islamorada, as the parcel is being proposed as a sender site in a Transferable Development Right (TDR) transaction. The report includes a site description, a vegetation map, a species list, and site photos.

Site visits were performed on the above referenced property on December 24, and December 26, 2022.

Site Description:

The developed property is approximately 24,250 sf and located on Florida Bay. The parcel contains two habitable structures, two sheds, a pool, a dock, and other accessory structures. Both native and exotic vegetation is located on site, including mature native canopy species. Numerous landscape plants and palms were observed. Native species on site consisted primarily of pockets of large canopy trees but understory trees were also present. As shown in Attachment B, a pocket of mature Red Mangroves are present in the northwest corner of the property. Outside of the mangrove edge, the shoreline is armored.

Species of Note:

Two invasive exotic species regulated by the Village of Islamorada were located on site, *Schinus terebinthifolia* (Brazilian Pepper) and *Eugenia uniflora* (Surinam Cherry). These species are listed as Category I and Category II invasive exotic species, respectively. All are required to be removed prior to a certificate of occupancy being issued. There are also several mature *Manilkara zapote* (Sapodilla) on site. While listed as an invasive exotic species by the Florida Keys Environmental Restoration Task Force, they are not classified as invasive by the Village of Islamorada.

Bursera simaruba (Gumbo Limbo), *Guapira discolor* (Blolly) and *Eugenia foetida* (Spanish Stopper) were the most common native species on site.

A complete species list is located in Table 1.

Mitigation Requirements:

The property would be classified as disturbed. As such the following conditions are required to be adhered to, should any development be proposed:

- All listed threatened, endangered, commercially exploited, and regionally important native plant species shall be preserved, protected, relocated or replaced with the same species or equally rare species suitable to the site in accordance with [section 30-1615](#).
- All specimen and champion trees shall be preserved in their natural condition;
- All non-invasive or native trees greater than six-inch dbh shall be preserved, protected, relocated or replaced in accordance with [section 30-1615](#).

- All areas of disturbance shall be managed to avoid the introduction and/or establishment of invasive exotic species; and
- All invasive exotic species shall be removed from the parcel proposed for development.

Appropriate permits must be obtained from the Village of Islamorada prior to removal of any vegetation. Please consult the Islamorada Environmental Planning Department for specific requirements.

Table 1 – Species List

<u>Scientific Name</u>	<u>Common Name</u>	<u>Map Key</u>	<u>Status</u>	<u>Notes</u>
<i>Bursera simaruba</i>	Gumbo Limbo	G	N	
<i>Capparis cynophallophora</i>	Jamaica Caper	-	N	
<i>Capparis flexuosa</i>	Limber Caper	-	N	
<i>Chrysobalanus icaco</i>	Coco Plum	-	N	
<i>Coccoloba diversifolia</i>	Pigeon Plum	Pp	N	
<i>Coccoloba uvifera</i>	Seagrape	-	N	
<i>Conocarpus erectus</i>	Green Buttonwood	B	N	
<i>Cordia sebestena</i>	Geiger Tree	Gg	N	
<i>Eugenia foetida</i>	Spanish Stopper	S	N	
<i>Eugenia uniflora</i>	Surinam Cherry	-	IEX	Cat II
<i>Guapira discolor</i>	Blolly	By	N	
<i>Ixora spp.</i>	Ixora	-	ex	
<i>Krugiodendron ferreum</i>	Black Ironwood	Bi	Ri	
<i>Manilkara zapota</i>	Sapodilla	Sd	ex	
<i>Pithecellobium unguis-cati</i>	Catclaw Blackbead	-	N	
<i>Rhizophora mangle</i>	Red Mangrove	-	N	State Protected
<i>Schinus terebinthifolia</i>	Brazilian Pepper	-	IEX	Cat I
<i>Thrinax radiata</i>	Florida Thatch Palm	Tr	END	
	Misc. Landscape Plants/Palms	-	ex	

See Status Key Below

Key ~ Status

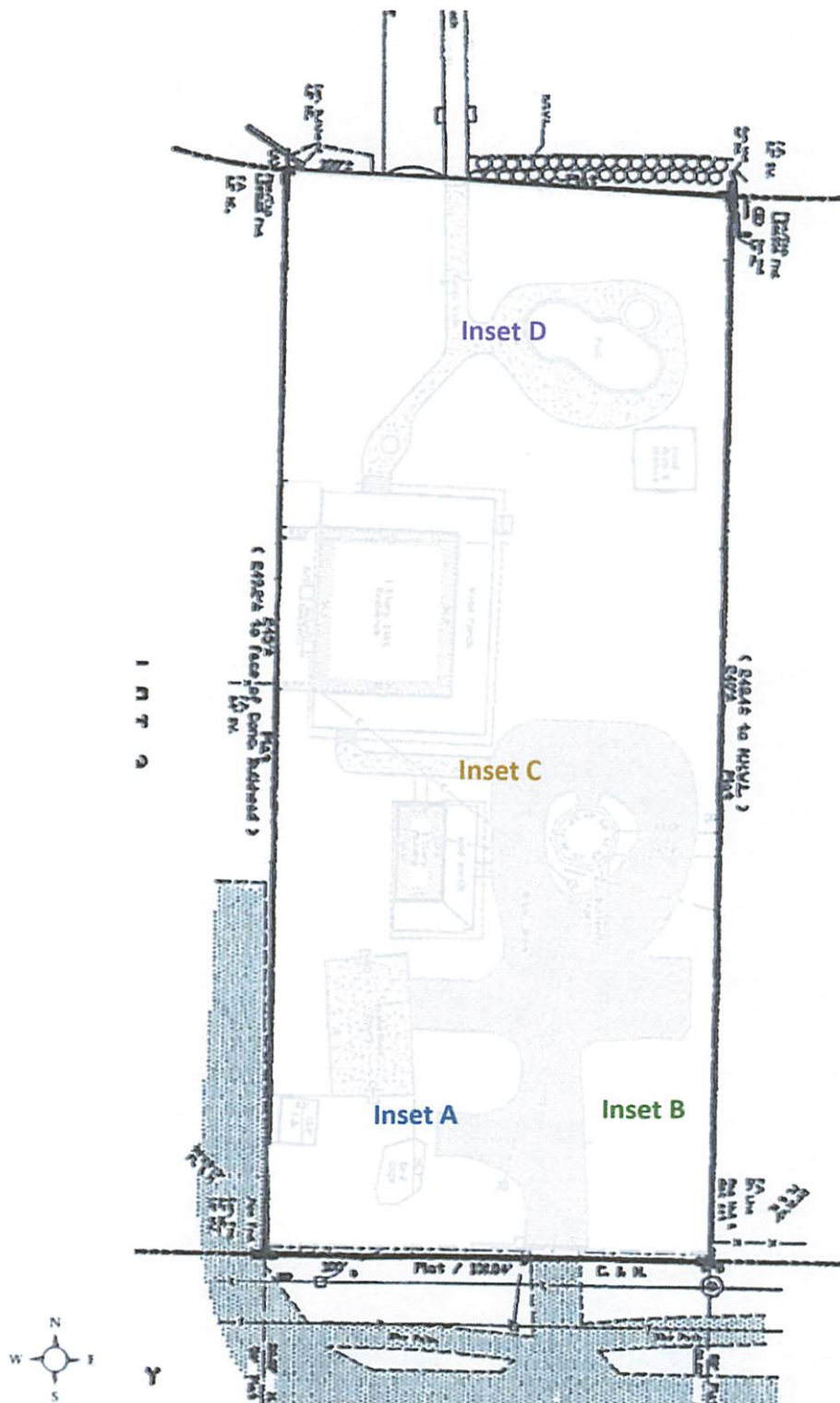
CE	Commercially Exploited	All Protected
ex	Exotic	non-native (may be naturalized)
END	Endangered	All Protected
IEX	Invasive Exotic	Removal Prior to CO Required
N	Native	> 4" dbh protected
RI	Regionally Important	All protected
T	Threatened	All Protected

Please feel free to direct any questions regarding this report to the author at the above referenced contacts.

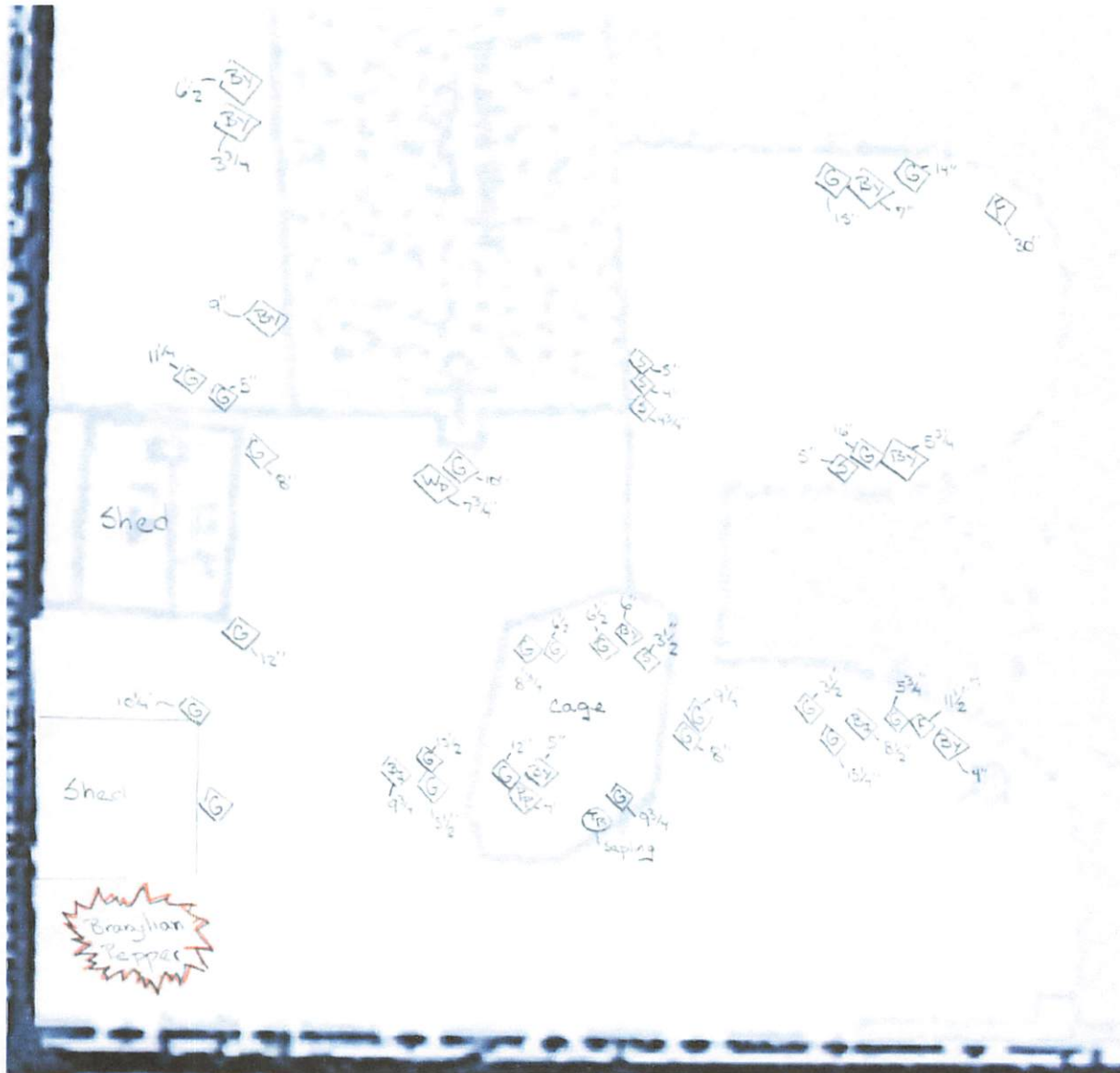
Attachment A
Location Map

Subject Property





Attachment B - Vegetation Map – Inset A (page 2 of 5)

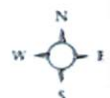


Please note locations are approximate due to the limitations of the measuring

Measurements indicate trunk specified.

Not to Scale

Please see Species Key in Plant List - Table 1



Attachment B - Vegetation Map – Inset B (page 3 of 5)



Please note locations are approximate due to the limitations of the measuring

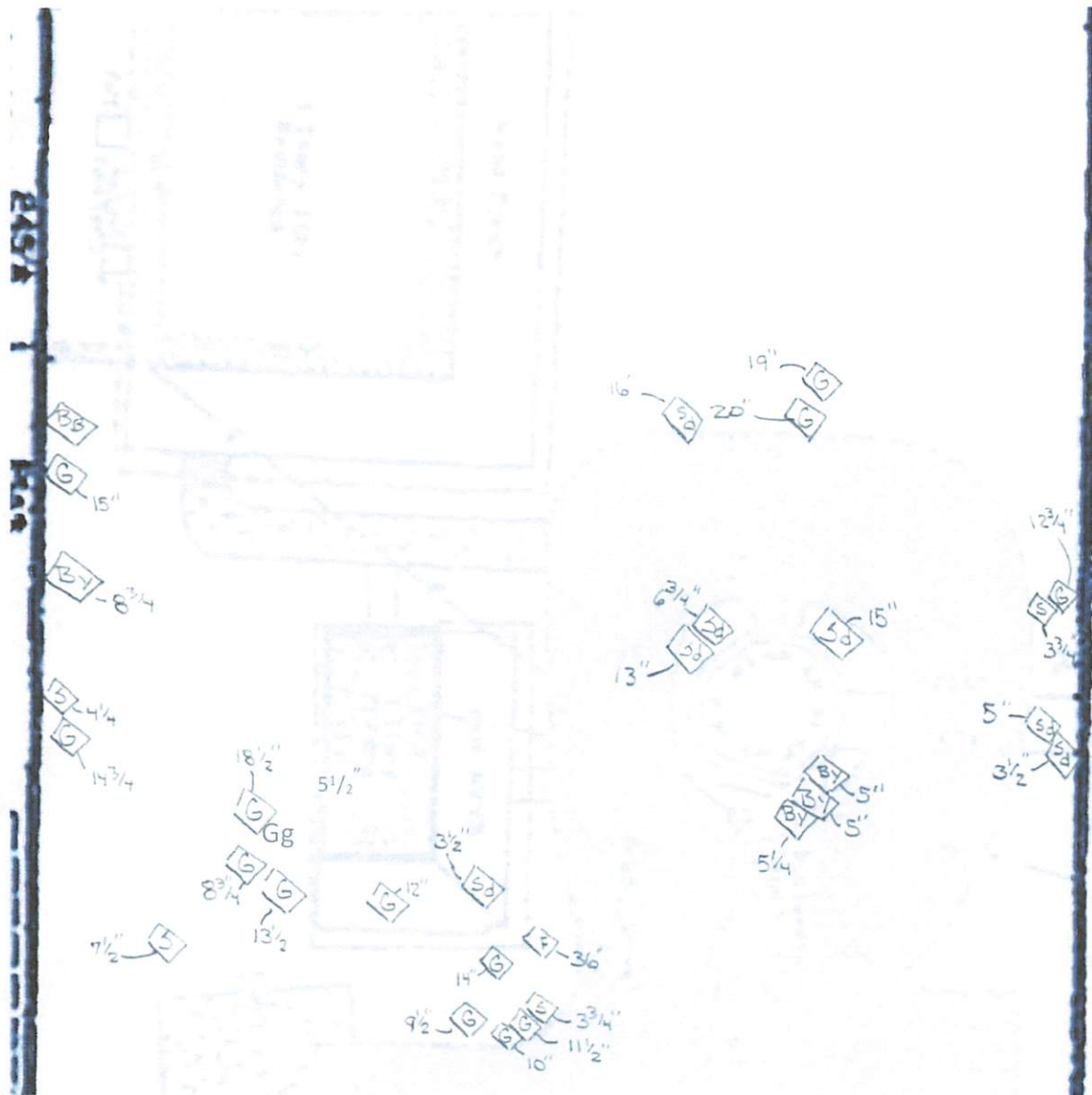
Measurements indicate trunk specified.

Not to Scale

Please see Species Key in Plant List - Table 1



Attachment B - Vegetation Map – Inset C (page 4 of 5)

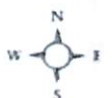


Please note locations are approximate due to the limitations of the measuring device used, measuring tape.

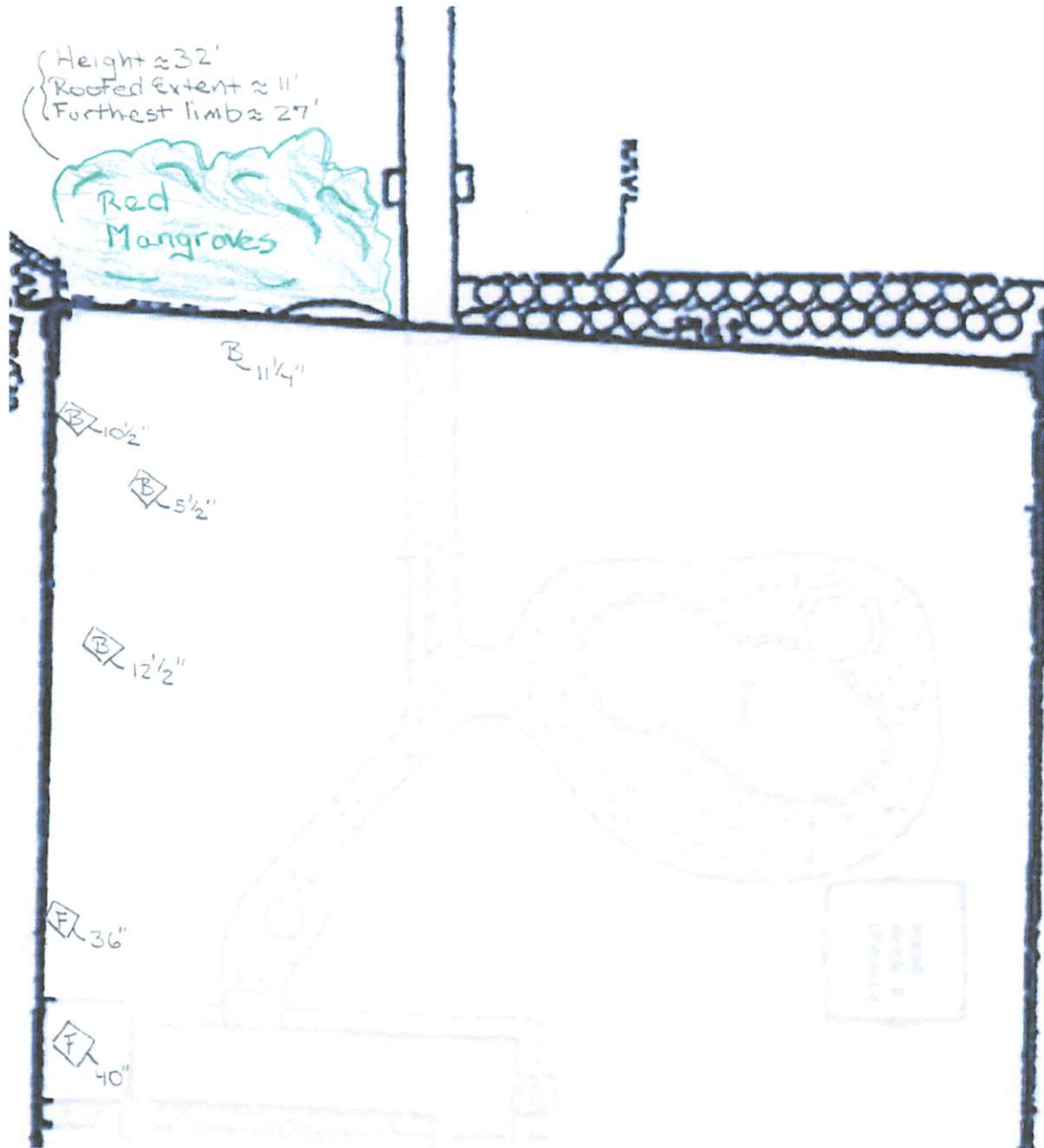
Measurements indicate trunk specified.

Not to Scale

Please see Species Key in Plant List - Table 1



Attachment B - Vegetation Map – Inset C (page 5 of 5)

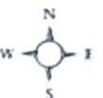


Please note locations are approximate due to the limitations of the measuring

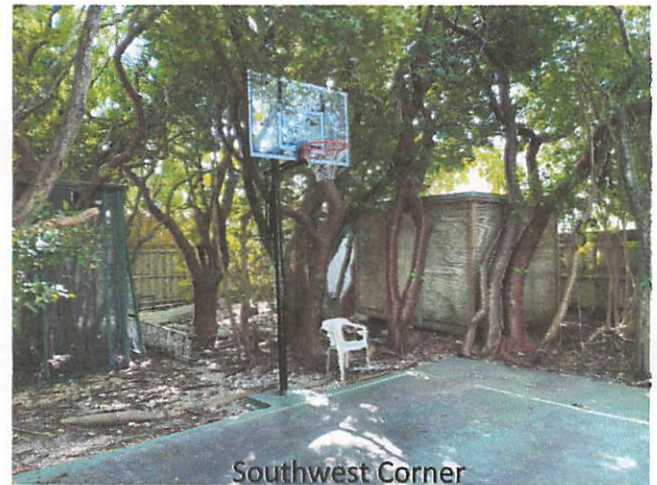
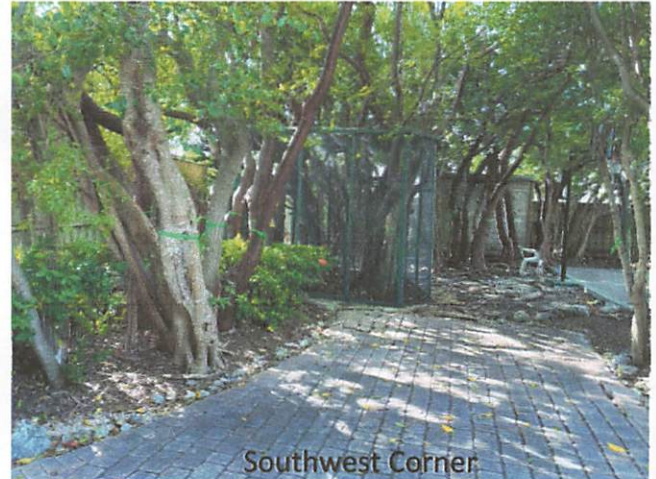
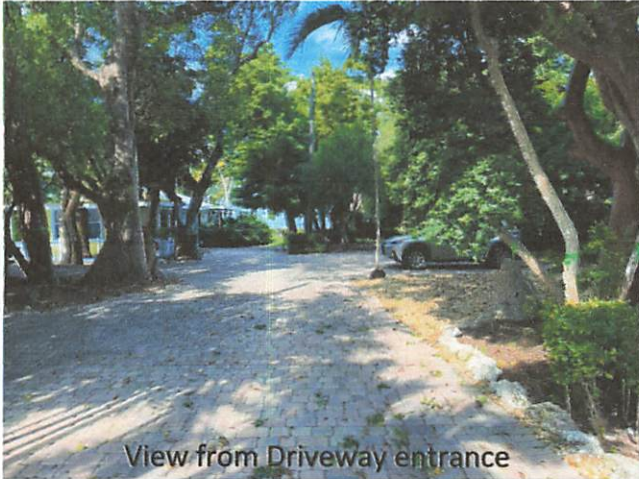
Measurements indicate trunk specified.

Not to Scale

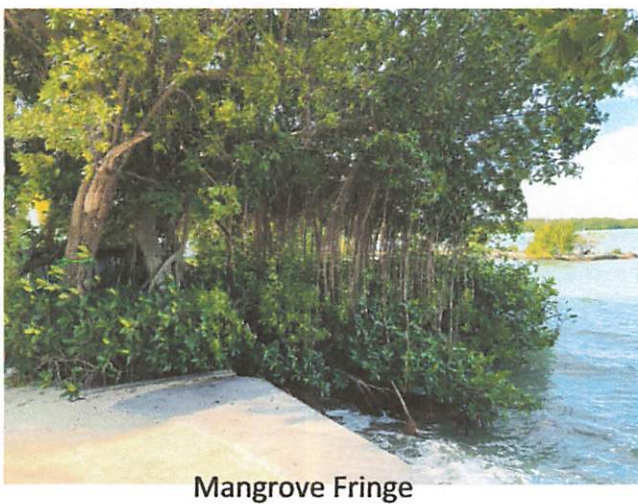
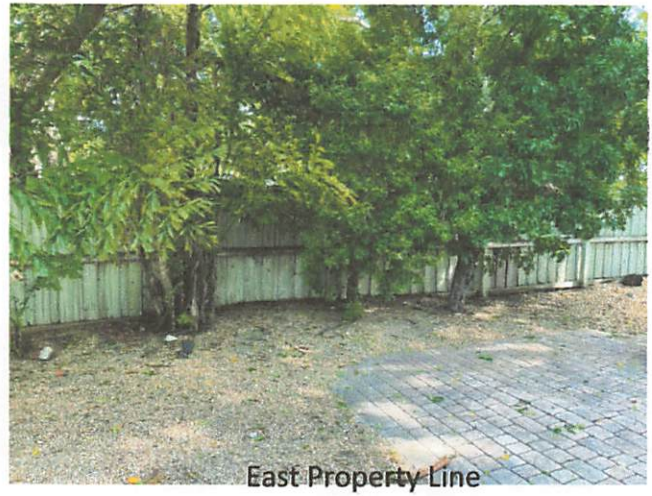
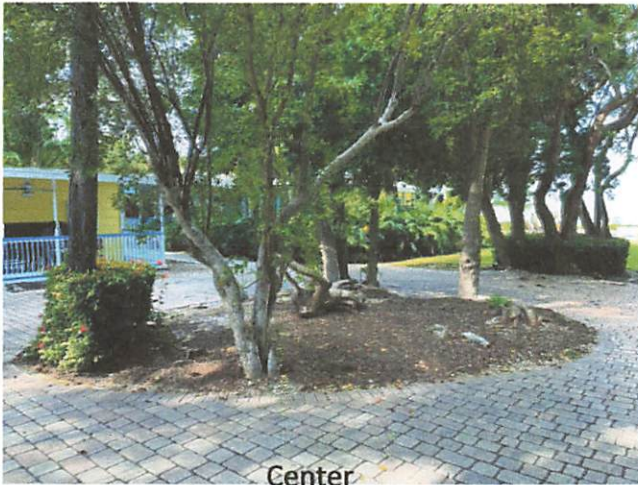
Please see Species Key in Plant List - Table 1



Attachment C Site Photos (Page 1 of 2)



Attachment C Site Photos (Page 2 of 2)



SMITH / HAWKS

ATTORNEYS AT LAW

Barton W. Smith, Esq.
Telephone: (305) 296-7227
Facsimile: (305) 296-8448
E-mail: Bart@SmithHawks.com

UPLOADED TO CITYVIEW ePORTAL

February 7, 2023

Daniel Gulizio, Planning and Development Director
Islamorada, Village of Islands Planning & Development Services
86800 Overseas Highway
Islamorada, FL 33036
Email: PlanningDirector@Islamorada.FL.US

Re: APPEAL APPLICATION: APPLICATION FOR TRANSFER OF DEVELOPMENT RIGHTS –WHAT A GOOD CATCH, LLC [FILE NO. PLADA20230026]

Dear Daniel,

Please allow this correspondence to serve as a supplemental memorandum (“Memorandum”) to the formal appeal application submitted on February 3, 2023 (“Application”), by and WHAT A GOOD CATCH, LLC (“Applicant”), as required in Islamorada, Village of Islands’ (“Village”) Code of Ordinances (“Code”). Pursuant to Code Sec. 30-281, Applicant is appealing the Village’s Letter of Denial of the Applicant’s Application for a Minor Conditional Use Permit for the Transfer of Development Right (“TDR”) (“Application”) requesting a TDR from the real property located at 81912 Overseas Highway, Upper Matecumbe Key, Florida 33036, having Monroe County Parcel ID No. 00399300-000000 (“Sender Site”) to the real property located at 82601 Old Highway, Upper Matecumbe Key, Florida 33036, having Monroe County Parcel ID No.: 00401260-000000 (the “Receiver Site”).

Applicant is appealing the Village’s Letter of Denial (the “Denial”), and Applicant provides the following in support of the Appeal:

APPEAL GROUNDS

The Village’s denial of the requested minor conditional use permit for the transfer of TDR, as described below, is based upon an interpretation of the Village Code which errantly conflates habitat classification with parcel classification, is contrary to the public good, and inconsistent with the purposes and policies of the Village’s Comprehensive Plan (“Comp Plan”). Applicant has provided the following in support of this appeal:

I. The Denial

The Denial states that: “The proposed TDR does not meet the criteria set forth in Sec. 30-504(b). The proposed site contains Class I habitat (hammock) and Class II habitat (disturbed hammock and disturbed beach or berm), and the proposed Sender Site contains Class III habitat (disturbed).”

It appears from the Denial that the Village has taken a position on how to classify mixed-habitat parcels—that the presence of *any* amount of Class I habitat on a parcel will result in the parcel being considered a Class I parcel. This interpretation is misguided, and conflates habitat classification with parcel classification. The Denial is based on reasoning that is inconsistent with the Code, and contrary to the goals and policies in the Comp Plan.

II. TDR Transfer Procedure

Section 30-504(b) of the Code, the TDR transfer procedure, states:

The receiver site shall be less environmentally sensitive than the Sender Site, according to a vegetation survey and/or a habitat analysis conducted by a certified biologist, and verified unless otherwise exempted or limited by the director of planning and development services or his designee, pursuant to habitat classifications described in subsection 30-1616(b)(2) of this Code, whereby the following conditions additionally apply:

- (1) Transfer shall be permitted from Class I parcels to Class II or Class III parcels;
- (2) Transfer shall be permitted from Class II parcels to Class II or Class III parcels;
- and
- (3) Transfer shall be permitted from Class III parcels to Class III parcels.

While this Section seems rather straightforward, it is woefully ambiguous. The Code fails to define any of the three classes of parcels. Instead, Section 30-504(b) directs us to Section 30-1616(b)(2), which simply defines the classes of habitats. While it is clear from the Code how *habitats* are classified, the classification of *parcels* is not. Obviously, the class of habitat present on a parcel provides insight into how the parcel should be classified; if the only habitat on a parcel is a Class I habitat, then the parcel should be classified as a Class I parcel. But, as the case is here, many parcels contain more than one habitat, each of which may have a different classification. Another consideration is the amount of habitat on a given parcel, i.e., what percentage of the parcel’s area is comprised of each habitat, and whether the habitats will be impacted by development.

As the Code fails to define parcel classifications and Section 30-504(b) requires the receiver site to be less environmentally sensitive “pursuant to habitat classifications described in subsection 30-1616(b)(2)”, then subsection 30-1616 needs to be taken into consideration to understand what is permissible through the TDR transfer procedure.

Section 30-1616 requires that all development be located on the least environmentally sensitive portions of a parcel, known as clustering. When a parcel contains multiple habitat types/classes, the development must be clustered on the least sensitive habitat. Based on these provisions, when classifying a parcel it is necessary to consider which habitats within the parcel are being proposed for development through a TDR, not simply which habitats are present on the parcel. This is especially true when proposed development through a TDR makes special provisions to guarantee that environmentally sensitive habitats will be preserved from development, through, i.e., conservation easements. The entire purpose behind the restrictions found in Section 30-504(b) is to protect environmentally sensitive habitats. Clearly, those habitats are within parcels—but as shown through clustering, parcels can be developed while specific habitats on those parcels are still protected and preserved.

Based on the provisions of section 30-1616, which are incorporated into the TDR transfer procedure, a parcel containing some amount of sensitive habitat does not make the entire parcel environmentally sensitive. Therefore, to determine the environmental sensitivity of a parcel (and its corresponding class), the specific habitats that will be impacted by the development proposed under the TDR should control; not the habitats that will be protected and preserved.

Here, the Receiver Site has four separate habitats on the parcel: hammock (Class I); disturbed hammock (Class II); disturbed with beach berm (Class II); and disturbed (Class III). This is outlined in the Vegetation Survey for the Receiver Site submitted with the Application. Also included in the Application was the Grant of Conservation Easement proposed to be placed on the Class I hammock habitat, which would guarantee that habitat's protection and remove it from any development on the Receiver Site. The entire development proposed on the Receiver Site through the Application is to be clustered on the least sensitive habitats within the Site—the home is to be located in the disturbed habitat within the parcel, with the drive for access to the home being through the disturbed hammock. As the proposed development through the TDR would only impact Class II and III habitats, it is contrary to the Code to classify the Receiver Site as a Class I parcel.

III. The Comp Plan

The Village's Comprehensive Plan also supports the reasoning provided above. Section 30-504(b) of the Code was created pursuant to Policy 1-3.1.3 of the Comp Plan—"the Village shall maintain a program to facilitate the transfer of a variety of development rights within the Village's boundaries[.]" That Policy further states that the TDR program shall achieve, *inter alia*, the following: "protect environmental resources in balance with protection of property rights;" "[e]ncourage the placement of conservation easements on environmentally sensitive . . . parcels of land; and [f]urther the public good and the goals, objectives and policies of the Comprehensive Plan."

When determining a parcel's classification, considering which habitats within the parcel will remain protected and undeveloped through a TDR transfer is the only way to protect environmental resources in balance with protecting property rights. Determining that the presence of any amount of environmentally sensitive habitat on a parcel makes that parcel have the same corresponding environmental classification will certainly protect environmental resources, but at great expense to the parcel owners' property rights. This reasoning is supported by the next objective of Policy 1-3.1.3: encouraging the placement of conservation easements on environmentally sensitive parcels of land.

To encourage the placement of conservation easements, the TDR transfer process must take into account the effect that such an easement will have on a parcel proposed for development through a TDR. If the placement of a conservation easement on a parcel's sensitive habitat (which would guarantee that habitat's protection and preservation) still results in that parcel being as environmentally sensitive as the habitat being excluded from development, then the TDR transfer process does nothing to promote placement of such conservation easements. This is exemplified by the fact that a conservation easement would not be required for the same development pursuant to a BPAS allocation. The only way for the TDR process to promote the placement of conservation easements on sensitive parcels and the habitat(s) therein is to have that easement act as effectively "removing" the habitat subject to easement from consideration in the parcel's classification during a TDR application.

Finally, the TDR transfer process is intended to promote the public good and the goals, objectives, and policies of the Comp Plan. This cannot be accomplished through the reasoning used in the Denial. As discussed above, that reasoning will result in the failure to balance property rights against protecting environmental resources.

In this case, ironically, this failure to balance property rights also leads to the Receiver Site not having a conservation easement placed on the sensitive habitat thereon. The reasoning in the Denial actually discourages the placement of conservation easements. Aside from the reasoning being antithetical to Policy 1-3.1.3 and the goals therein, it is also contrary to the public good. The Denial here will result in eliminating all economic value on the Receiver Site, effecting a regulatory taking through inverse condemnation. As outlined in the Applicant's correspondence to the Village regarding BPAS Application PRSFC202000634, dated August 26, 2022, attached hereto as **Exhibit A**, the lack of market rate allocations available through the BPAS, in conjunction with Code Section 30-476(a)(4), makes it impossible for the Receiver Site to obtain building rights except through the TDR process. For reference, the Village's response to that correspondence, dated December 20, 2022, is attached hereto as **Exhibit B**. The reasoning in the Denial would make the Receiver Site a Class I parcel, and thus entirely ineligible for a TDR, as Section 30-504(b) does not allow for any transfer to a Class I parcel. As the reasoning in the Denial results in the Receiver Site being undevelopable, the Site will lose all economic value. This harms the public good as the Village will be liable for the taking effected on the Receiver Site, the cost of which will be borne, at least in part, by the Village's residents and taxpayers.

Daniel Gulizio, Planning and Development Director
RE: Appeal Application – What a Good Catch, LLC - [File No. PLADA20230026]
February 7, 2023
Page 5 of 5

IV. Conclusion

The Denial is improper, should be rescinded, and the Receiver Site should not be classified as a Class I parcel. The Denial is based on reasoning that is inconsistent with the Code, and contrary to the goals and policies in the Comp Plan. The reasoning for the Denial conflates habitat classification with parcel classification, as it fails to consider Section 30-1616 of the Code, which is directly referenced in the Code's TDR transfer process. Additionally, the reasoning for the Denial is contrary to the Comp Plan's policies and goals, as well as the public good. The reasoning fails to balance property rights against the protection of environmental resources, and actually discourages the placement of a conservation easement on the environmentally sensitive hammock habitat within the Receiver Site. Were the Applicant to receive a BPAS allocation, the Applicant would be able to develop the parcel as intended, without the conservation easement. Further, the public good is harmed as the Denial forecloses all possibility for the Receiver Site to receive building rights through a TDR, which, as discussed above, will eliminate all economic value on the Receiver Site and effect a regulatory taking through inverse condemnation. The Denial should be reversed.

If you have any questions and/or concerns, or require anything further, please do not hesitate to reach out to the office.

Sincerely,



Barton W. Smith

BWS/JCM/JG/bg

Enclosures

EXHIBIT A

SMITH/HAWKS

ATTORNEYS AT LAW

Barton W. Smith, Esq.
Telephone: (305) 296-7227
Facsimile: (305) 296-8448
Email: Bart@SmithHawks.com

ELECTRONIC MAIL & FEDEX
7777 7682 2993

August 26, 2022

Daniel J. Gulizio, Director
Planning and Development Services
86800 Overseas Highway
Islamorada, Florida 33036
Email: PlanningDirector@Islamorada.FL.US

RE: 82601 OLD HIGHWAY, ISLAMORADA, FLORIDA 33036
BPAS APPLICATION PRSFC202000634

Dear Daniel,

Please be advised that this law firm represents What A Good Catch, LLC ("Applicant"), the owner of the property located at 82601 Old Highway, Islamorada, Florida 33036, having Monroe County Parcel ID No.: 00401260-000000, Alternate ID No.: 1493601 (the "Property") and Applicant in the Village of Islamorada Building Permit Allocation System ("BPAS").

BACKGROUND

On or about June 26, 2020, the former owner of the Property applied to the BPAS to acquire single-family residential building rights for the Property—permit number PRSFC202000634. Applicant purchased the Property on December 22, 2020, for \$1,575,000.00 and assumed the former owner's BPAS application. Prior to closing on the Property, Applicant met with staff from the Village of Islamorada's ("Islamorada") Planning and Building Departments on or about December 14, 2020 to discuss the Property's ranking in the Islamorada BPAS and were advised that upon dedicating a lot, the Property would rank 1st in the BPAS rankings and that neither a cistern, nor solar capture system would be necessary to obtain a building permit allocation. Thereafter, in order to secure a top position in the BPAS application rankings, and in reliance on statements made by Islamorada staff, Applicant purchased the lot at 106 Palm Lane, Islamorada, Florida 33036, on January 27, 2021, for \$165,000.00 to be dedicated

00267439 - v2

Page 1 of 4

to Islamorada. In addition to the statements referenced above, the decision to make said dedication was based on Islamorada Code Section 30-476(a)(4), which provides that such land dedications would give BPAS applications ten additional points in the competitive ranking system.

Applicant's land dedication was accepted at the regular Islamorada Council Meeting on June 23, 2022. The resulting additional points for land dedication increased the Property's ranking on the BPAS list substantially; however, to date, Applicant has been unsuccessful in obtaining a permit allocation through the Islamorada BPAS.

Further, it has become readily apparent that Applicant is now wholly unable to obtain a building permit through the Islamorada BPAS due to Applicant's ranking, the remaining number of permits available for allocation, and by operation of Islamorada regulations and resolutions that cap the number of building permits to be allocated to applicants with land dedications.

More specifically, there are eleven (11) remaining market rate building permits available for allocation through the Islamorada BPAS. Applicant is currently ranked 8th out of 80 pending BPAS applications. Like Applicant, the seven (7) applicants ranked above Applicant have all dedicated land to Islamorada in order to increase their respective rankings. Islamorada Code Section 30-476(d)(1)a requires that at least eight (8) of the remaining eleven (11) market rate permits be allocated to those applicants without a land dedication. Islamorada Code Section 30-476(d)(1)b limits the number of market rate permits to be allocated to those applicants with a land dedication to a maximum of six (6).

As a result, despite being ranked number 8 on the BPAS application ranking for the second quarter of 2022, the Property will not receive an allocation. Of the eleven (11) remaining market rate building permits available, eight (8) are required to be allocated to non-land-dedicating applicants, regardless of their ranking. Therefore, a maximum of three (3) market rate building permits are available to be allocated to those applicants with land dedications (assuming the Village Council decides to allocate any at all per its discretion under Islamorada Code Section 30-474(e)). Given that Applicant ranks number eight (8) behind seven (7) other land dedicating applicants, it is impossible that Applicant will receive a BPAS allocation.

Despite Applicant's due diligence and substantial investments, due to the above, it has become apparent that there are not enough permits in the BPAS allocation pool for the Property to ever be developed. The practical result is that Applicant has expended nearly two million dollars, purchased and dedicated an additional lot to Islamorada to be left with an unbuildable parcel of real property with no viable economic use.

REGULATORY TAKING

As you are likely aware, where regulations restrict property rights to such a degree that it eliminates all or essentially all economically viable uses of a piece of property, a taking has occurred. Islamorada's implementation of the regulations regarding the BPAS will result in the substantial deprivation of Applicant's economic use of the Property and reasonable investment-backed expectations. Applicant purchased the Property, and the additional property that was dedicated to Islamorada in good-faith reliance on representations made by Islamorada staff and Islamorada Code provisions related to BPAS in effect at the time. On the Draft Ranking of BPAS Applications for 2022 Quarter 2, Applicant is ranked number eight; however, because of the BPAS regulations, as applied by Islamorada, the applications ranked nine through fourteen are recommended for allocation due to the fact that those applications did not include land dedication. Applicant made its substantial investments in the Property and the dedicated property in reliance on the BPAS allocations being made according to the applications' rankings, which would enable Applicant to receive an allocation. Islamorada's decision to award allocations not based on the applications' rankings, but upon whether an application does or does not include land dedication, will result in the Property being deprived of its ability to receive a market rate allocation. Islamorada, through its application of the BPAS regulations, will effectively take the Property, as such application of the regulations will eliminate essentially all economically viable uses of the Property.

Daniel J. Gulizio, Planning Director
RE: BPAS Application PRSFC202000634
August 26, 2022
Page 4 of 4

DEMAND

Applicant respectfully demands that Islamorada grant market rate allocations based on BPAS applications rankings, and not erroneously deny allocations simply based on the fact that an application makes the additional investment in land to dedicate to Islamorada. Should Applicant be granted an allocation in accordance with its BPAS ranking before all allocations are granted, then the Property's economically viable use will not be deprived, and regulatory takings litigation can be avoided. Should Applicant's application be denied any future market rate allocation, despite its high ranking demonstrating that it should receive an allocation over lower ranked applications that do not dedicate land, then Islamorada will have affected a regulatory taking and Applicant will pursue all remedies available at law. Applicant wishes to avoid any unnecessary litigation in this matter and would prefer to amicably resolve this issue. To that end, Applicant, through the undersigned, requests that you confirm receipt of this correspondence and respond to coordinate a meeting within the next two weeks to discuss alternatives to litigation available to address the concerns raised herein. We look forward to your response and working to preserve all parties' interests in a fair manner.

Sincerely,



Barton W. Smith

BWS/jcm/lsl/bg

Cc: *(Electronically)*: Client/file

Jamie Terry, Senior *Administrative Assistant (Planning Department)*

EXHIBIT B



ISLAMORADA, VILLAGE OF ISLANDS
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT
86800 Overseas Highway • Islamorada, Florida 33036 • www.islamorada.fl.us

December 20, 2022

Mr. Barton Smith, Esq.
Smith/Hawks Attorneys at Law
138 Simonton Street
Key West, Florida 33040

RE: 82601 Old Highway, Upper Matecumbe Key
Islamorada, Village of Islands
Building Permit Allocation System (BPAS) Application: PRSFC202000634

Dear Mr. Smith,

I am writing in response to your correspondence dated August 26, 2022, and as a follow-up to the recent meeting with the Village Manager on December 5, 2022, in connection with the above-referenced property. Specifically, you have requested that the Village *"grant market rate allocations based on BPAS application rankings, and not erroneously deny allocations simply based on the fact that an application makes the additional investment in land to dedicate to Islamorada."*

As discussed, Village Code Sec. 30-476 (a)(4) states that *"Applications including land dedication shall be evaluated in a category separate from applications without land dedication."*

Additionally, Sec. 30-476 (d)(1) states: *"There shall be a minimum of eight market rate dwelling units annually available in this category. In quarterly allocation periods where market rate applications with land dedications do not rank higher than those applications without land dedications, the applications which rank highest shall be awarded the allocation(s)."*

Accordingly, the Village will continue to issue allocations in accordance with the guidelines contained within the Land Development Regulations – Article IV, Division 11 (Building Permit Allocation System).

Thank you for the opportunity to provide clarity on these issues.

Sincerely,

A handwritten signature in blue ink, which appears to read "Daniel J. Gulizio".

Daniel J. Gulizio, Director
Planning and Development Services



ISLAMORADA, VILLAGE OF ISLANDS
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT
86800 Overseas Highway • Islamorada, Florida 33036 • www.islamorada.fl.us

Mr. Ty Harris, PA
110 Plantation Shores Drive
Tavernier, Florida 33070

SUBJECT: Application for Transfer of Development Rights – After Hours INC. & What A Good Catch LLC (File No.: PLTDR20230001)

Dear Mr. Harris,

You submitted an application for the Transfer of Development Rights Approval of one (1) Market Rate Residential Dwelling Unit from property located at 81912 Overseas Highway on Upper Matecumbe Key with Shoreline within the VC (Village Center) Zoning District, with RE Parcel#: 00399300-000000 (the "Sender Site") to property located at 82601 Old Highway on Upper Matecumbe Key with Shoreline within the RE (Residential Estate) Zoning District, with RE Parcel#: 00401260-000000 (the "Receiver Site").

I have reviewed the above application in regard to the Islamorada, Village of Islands Code of Ordinances, Chapter 30, Article IV, Division 12 Transfer of Development Rights. After reviewing the entire application including the Environmental Assessment & Vegetation Survey prepared by Julie Cheon, Environmental Consultant, Inc. dated December 26, 2022, for the Sender Site and the Vegetation Survey & Restoration Plan prepared by Julie Cheon, Environmental Consultant, Inc. dated October 25, 2020 for the Receiver Site I have made the following determination:

The proposed TDR does not meet the criteria set forth in Sec. 30-504(b). The proposed receiver site contains Class I habitat (hammock) and Class II habitat (disturbed hammock and disturbed beach or berm), and the proposed sender site contains Class III habitat (disturbed).

Therefore, this letter shall serve as official notice that the above referenced Transfer of Development Rights application does not comply with the provisions of Chapter 30, Article IV, Division 12 – Transfer of Development Rights. Accordingly, your request to transfer development rights from 81912 Overseas Highway, RE Parcel #00399300-000000 to property located at 82601 Old Highway, RE Parcel #00401260-000000 is denied.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Jennifer L. DeBoisbriand
Planning Director



Islamorada, Village of Islands

REGULAR VILLAGE COUNCIL MEETING

April 13, 2023 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

MINUTES

I. CALL TO ORDER / ROLL CALL

Mayor Joseph B. Pinder III called the meeting to order at 05:30 PM

II. PLEDGE OF ALLEGIANCE

Phil led the Pledge of Allegiance and Pastor Brian Neal started the meeting with a prayer.

III. AGENDA: Requests for Deletion / Emergency Additions

Consent Item B was removed to the next agenda. Director of Development Services Dan Gulizio provided an overview of the proposed resolution regarding floor area ratio standards. Discussion ensued and Council requested more information before considering the request.

Mayor Joseph B. Pinder III added a conversation regarding a storage warehouse on Monte Green's property.

Vice Mayor Sharon Mahoney added a discussion on donated lots and bus shelters.

Council Member Henry Rosenthal added a discussion of the manager's contract.

The Quasi-judicial hearing was moved to be considered before the other action items on the agenda.

IV. REPORTS, PRESENTATIONS AND ANNOUNCEMENTS

Council Member Henry Rosenthal read a proclamation on the 30th anniversary of the Leadership Monroe program and announced the upcoming Class XXX Graduation on April 29. Leadership Monroe Vice President Adriana Cuomo and Sheriff Rick Ramsay promoted the program.

A. Presentation by Monroe County Sheriff Rick Ramsay

Monroe County Sheriff Rick Ramsay returned funds to the Village. Mayor Joseph B. Pinder III thanked Sheriff Ramsay for the funds and his service to the community.

V. PUBLIC COMMENT

(This is general public comment. It provides an opportunity for the public to speak about matters not scheduled elsewhere on the agenda. The mayor opens public comment on agenda items throughout the meeting.)

Speakers included:
Carlos G of Islamorada Social
Sue Miller
Van Cadenhead
Joe Wischmeier
Deb Gillis

VI. MAYOR / COUNCIL COMMUNICATIONS

Mayor Joseph B. Pinder III called a recess at 8:20 p.m.

The meeting reconvened at 8:38 p.m.

Council Member Henry Rosenthal discussed the Village Manager's contract, and noted the need to schedule Mr. Yates' review.

Council Member Henry Rosenthal noted his preference that the sheriff's funds be set aside for enforcement of the Fills. Finance Director Maria Bassett noted that the sheriff's services were part of the general fund and that the monies were required to be a credit to that expense.

Council Member Mark Gregg suggested bringing some of the non-controversial ordinances to the agenda soon.

Mayor Joseph B. Pinder III initiated the Monte Green discussion. Mayor Pinder noted Mr. Green had been granted a major conditional use and had been advised he needed to apply for a minor conditional use for storage containers he proposed to place on his property.

Director of Development Services Dan Gulizio noted the process requires Mr. Green to complete the application and pay the fees. He noted there was no opposition, it was required by code. Village Manager Ted Yates noted that Mr. Gulizio had spoken with Mr. Green and offered to help him through the process.

VII. VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

Village Manager Ted Yates addressed Vice Mayor Sharon Mahoney's question about the bus program that Monroe County is working on. There were no updates, but the current Freebee contract runs from July 2023 to June 2024. Mr. Yates noted there would be an opportunity for substantive discussion.

The charitable contribution policy and application were passed by the Council. The application had recently been published and would remain active for 60 days. Mr. Yates' office had been communicating with past organizations and had a press release in the paper. He had been working on a memorandum for the Committees with details on each committee, members, and roles.

Mr. Yates asked for the Council's thoughts on proposing a moratorium on BPAS. He discussed potential dates for Fills workshop and code amendments - 2 hour Fills workshop on May 16 and proposed a May 4 strategic planning session prior to the Regular Council Meeting.

VIII. CONSENT AGENDA

(All items on the Consent Agenda are considered routine by the Village Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event, the item will be moved to the Main Agenda.)

ACTION: Motion to item VIII. by None second by None;
Motion with a 0:0

AYES: None

NAYS: None

ABSTAIN: None

- A.** Minutes of the Regular Village Council Meeting held March 30, 2023
- **TAB 1** (Marne McGrath, Village Clerk)

Mayor Joseph B. Pinder III opened public comment at 6:34 p.m.
As there was no one wishing to speak, Mayor Pinder closed public comment.

ACTION: Motion to approve item VIII.A. by Mark Gregg second by Henry Rosenthal;
Motion passed with a 5:0

AYES: Mark Gregg, Elizabeth Jolin, Henry Rosenthal, Sharon Mahoney, Joseph B. Pinder III

NAYS: None

ABSTAIN: None

- B.** Resolution Approving Work Authorization No. 2 with Cyriacks Environmental Consulting Services ("Cecos") - **TAB 2** (Daniel Gulizio, Planning Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 2 WITH CYRIACKS ENVIRONMENTAL CONSULTING SERVICES INC. FOR A FLOOR AREA RATIO MAPPING PROJECT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE WORK AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE

This item was removed from the agenda.

IX. QUASI-JUDICIAL

- A.** Continued from March 2nd Meeting -- Administrative Appeal - Transfer of Development Rights - **TAB 3**

(Jennifer DeBoisbriand , Planning Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING ADMINISTRATIVE APPEAL NO. PLADA20230036 FILED BY SMITH HAWKS, PL (AGENT) ON BEHALF OF WHAT A GOOD

CATCH LLC (APPELLANT) RELATING TO AN ADMINISTRATIVE DECISION AND INTERPRETATION BY THE DIRECTOR OF PLANNING (DENIAL OF A TRANSFERABLE DEVELOPMENT RIGHT) FOR PROPERTY LOCATED AT 81912 OVERSEAS HWY (REAL ESTATE NUMBER 00399300-00000) AND 82601 OLD HIGHWAY (REAL ESTATE NUMBER 00401260-000000), ON UPPER MATECUMBE KEY, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS LEGALLY DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE

Village Attorney John Quick noted this item was continued from the March 2, 2023 Regular Village Council Meeting and that the previous discussion was entered into the record for this item.

Ex parte communications were disclosed:

Council Member Elizabeth Jolin had none.

Council Member Henry Rosenthal spoke to the applicant a few times.

Mayor Joseph B. Pinder III spoke to Rep. Jim Mooney.

Vice Mayor Sharon Mahoney had none.

Council Member Mark Gregg spoke to Attorney Smith.

Planning Director Jennifer DeBoisbriand briefly summarized the request and noted that her presentation from March 2 had not changed.

Director of Development Services Daniel J. Gulizio provided an overview of the TDR process, noting the ordinance has not yet been considered by Council.

Attorney Bart Smith noted that the applicant removed their request from March 2, 2023 to this meeting in hopes that movement would have occurred to amend the TDR ordinance. He summarized his previous request for the edification of the Council and noted the applicant would return the condition of the receiver site hammock area to the satisfaction of the Village Biologist.

The applicant is currently 11th in the queue for BPAS, and noted the future of development in the Village would be through TDRs. Council Member Elizabeth Jolin asked Director of Development Services Daniel J. Gulizio to summarize how the pulled consent agenda item FAR data set would tie into this request. Mayor Joseph B. Pinder III asked if there was a way to see the footprints of several TDR properties and asked for clarification on how the floor area ratio standards would affect future development.

Vice Mayor Sharon Mahoney asked Attorney Smith how to ensure that the replaced hammock area stays intact in case of a storm. Mr. Smith noted there is a certain survival rate for hammock areas and that they should be monitored for five years. Council Member Mark Gregg noted the conservation easement is a contract between the Village and the property owner and he applauded the applicant's offer to add this enhancement.

Council Member Elizabeth Jolin noted that 80% of our hammock areas have been lost and that they should be preserved. She noted this should be a jumping off point for a conversation on how to preserve our environment.

Deb Gillis spoke in favor.

Sue Miller and Van Cadenhead spoke in opposition.

Vice Mayor Sharon Mahoney noted this is a good example of what is wrong with our code and consistency of regulation. Public comment was closed at 7:15 p.m.

Deliberation of Council:

Council Member Mark Gregg suggested making this an opportunity to guide how the village handles future development and encouraged creation of a template for a TDR ordinance with built-in environmental protections. He noted if this request was in BPAS rather than a TDR there would be no mechanism to protect hammock areas and the environment. He suggested approval of the conditions proffered by the applicant.

Council Member Henry Rosenthal noted the severity of the consequence of not following through should be drastic to encourage compliance. Mr. Smith noted the condition of non-compliance could be foreclosure. Mayor Joseph B. Pinder III noted it was similar to a surety bond to ensure compliance. Council Member Mark Gregg noted during their first term there was a property they considered that was procured through that process.

X. RESOLUTIONS

- A.** Resolution Ratifying FY 2021-2022 Payments to Page Excavating for Wastewater-Related Capital Project and Repair and Maintenance Expenses Incurred - **TAB 4**

(Maria Bassett, Finance Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, EXPENDITURES INCURRED FROM PAGE EXCAVATING, INC., IN FY 2021-2022; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

Village Manager Ted Yates noted that the next three tabs would be reported on together, but that public comment would be done for each tab. Finance Director Maria Bassett summarized that the three items were housekeeping items. It was noted that Page was the only contractor to fulfill the requirements for a continuing service agreement after the bid process. Ms. Bassett noted the reimbursement was obtained from the U.S. Corps of Engineers and the item was being submitted to Council to ratify last year's expenses for transparency and reimbursement requirements.

Public comment:

Van Cadenhead and Deb Gillis

- B. Resolution Approving a First Amendment to Continuing Services Agreement between the Village and Page Excavating, Inc.- **TAB 5** (Maria Bassett, Finance Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CONTINUING SERVICES AGREEMENT BETWEEN PAGE EXCAVATING, INC., AND ISLAMORADA, VILLAGE OF ISLANDS, TO PROVIDE PROFESSIONAL CONTRACTOR SERVICES TO THE WASTEWATER DEPARTMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE

Finance Director Maria Bassett reported that the continuing service agreement was to extend the current services until the completion of the bid process, which would begin in May.

- C. Resolution Approving Work Authorization No. 4 with Page Excavating, Inc. for FY 2022-2023 Services - **TAB 6** (Maria Bassett, Finance Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 4 BETWEEN PAGE EXCAVATING, INC., AND ISLAMORADA, VILLAGE OF ISLANDS, TO REPLACE CONCRETE RINGS AROUND VACUUM PIT LIDS AND TO PROVIDE OTHER WASTEWATER SUPPORT SERVICES AS NEEDED; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF WORK AUTHORIZATION NO. 4; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE WORK AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE

Finance Director Maria Bassett noted the work was required to maintain the wastewater system. She indicated that Council approval keeps rates from being raised and that it has been the same since 2019. She further noted the Village was at risk of forfeiting grant funding if the item was not approved.

Village Manager Ted Yates noted this contract extension holds the Village over until a new contractor can be procured through the bid process.

There were no additional speakers for public comment.

- D. Resolution Establishing Auditor Selection Committee - **TAB 7** (Maria Bassett, Finance Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, PERTAINING TO THE ESTABLISHMENT OF AN AUDITOR SELECTION COMMITTEE; DEFINING THE TERMS AND COMPOSITION; DEFINING THE MEETINGS AND DISQUALIFICATION; DEFINING THE STAFF

**PARTICIPATION; DEFINING THE GOALS AND OBJECTIVES;
DEFINING THE DUTIES AND RESPONSIBILITIES; DEFINING
THE SUNSET DATE; AND PROVIDING FOR AN EFFECTIVE
DATE**

Finance Director Maria Bassett noted that the Council asked to go out to bid for a new audit firm, and there are statutory guidelines that must be followed. She summarized the composition of the Auditor Selection Committee could be one council member and two citizen members who do not need to be residents but should have the appropriate qualifications. Ms. Bassett asked for a determination of who would be the council member of the selection committee.

Council Member Henry Rosenthal didn't think any of them have the background, but it was statutorily required. Finance Director Bassett noted their experience on Council leaves them all in a favorable position to serve.

After further discussion, Council Member Elizabeth Jolin was nominated to serve and she accepted the appointment.

There was no public comment.

XI. ADJOURNMENT

The meeting was adjourned at 9:24 p.m.

RESOLUTION NO. 23-04-45

Filed and Recorded in Official Records of
MONROE COUNTY KEVIN MADOK, CPA

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING ADMINISTRATIVE APPEAL NO. PLADA20230026 FILED BY SMITH HAWKS, PL (AGENT) ON BEHALF OF WHAT A GOOD CATCH LLC (APPELLANT) RELATING TO AN ADMINISTRATIVE DECISION AND INTERPRETATION BY THE DIRECTOR OF PLANNING (DENIAL OF A TRANSFERABLE DEVELOPMENT RIGHT) FOR PROPERTY LOCATED AT 81912 OVERSEAS HWY (REAL ESTATE NUMBER 00399300-00000) AND 82601 OLD HIGHWAY (REAL ESTATE NUMBER 00401260-000000), ON UPPER MATECUMBE KEY, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS LEGALLY DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ty Harris, PA ("Representative") on behalf of After Hours Inc ("Owner") applied for Minor Conditional Use Permit for the Transfer of Development Right ("TDR") ("Application") pursuant to Section 30-503 of the Code of Ordinances Islamorada, Village of Islands, Florida on January 4, 2023, to transfer one (1) TDR from the real property located at 81912 Overseas Highway, Upper Matecumbe, Florida, having Parcel ID 00399300-000000 ("Sender Site") to the real property located at 82601 Old Highway, Upper Matecumbe, Florida, having Parcel ID 0040126-000000 (the "Receiver Site"); and

WHEREAS, the Director of Planning sent notice of denial for TDR application PLTDR20230001 to the owner's representative via email on January 27, 2023; and

WHEREAS, on February 3, 2023, Barton W. Smith ("Agent") submitted an Administrative Appeal on behalf of What a Good Catch ("Applicant"), appealing the Planning Director's decision to deny the application for Transfer of Development Rights; and

WHEREAS, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on March 2, 2023; and

WHEREAS, the Village Council tabled the hearing on March 2, 2023 to a date certain hearing date for April 13, 2023; and

WHEREAS, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on April 13, 2023; and

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Findings of Fact.

The Village Council, having considered the testimony and evidence presented by all parties, including Village Staff, does hereby find and determine:

(1) The Application for a Transfer of Development Rights meets the requirements set forth in the Village Code, Chapter 30, Article IV, Division 12 – Transfer of Development Rights and has demonstrated through competent substantial evidence that the criteria for granting the Request have been met.; and

(2) The applicant has met the standards for an Administrative Appeal of the denial of the proposed Transfer of Development Rights contained within Sec. 30-281 (Administrative Appeals) of the Village Code.; and

(3) The Village Council approves the Request submitted by the Agent on behalf of the Applicant.

Section 3. Conclusions of Law.

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Based upon the above Findings of Fact, the Village Council does hereby make the following
Conclusions of Law:

(1) The Request has been processed in accordance with the Village Comprehensive
Plan and the Code; and

(2) In rendering its decision, as reflected in this Resolution, the Village Council has:

- (a) Accorded procedural due process; and
- (b) Observed the essential requirements of the law; and
- (c) Supported its decision by competent substantial evidence contained within
the record; and
- (d) Imposed the following conditions:
 - 1. The property owner shall enhance the existing hammock on the receiver site
subject to the satisfaction of the Village biologist.
 - 2. The final footprint of the restored hammock on the receiver site shall be
placed into a conservation easement subject to the satisfaction of the Village
biologist. The restored hammock will be monitored for 5 years and shall
remain intact based on survival rates to the satisfaction of the Village.
 - 3. If the restored hammock on the receiver site is destroyed, it shall be replanted
to the satisfaction of the Village biologist and subject to all of the
enforcement mechanisms of the Village.
 - 4. The proposed single-family residence will be consistent with the plans
submitted to the Village in connection with the pending Building Permit
Allocation System (BPAS) application.

Section 4. Effective Date.

This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this resolution shall not be effective or acted upon by the Applicant until forty-five (45) days following the rendition to the Department of Economic Opportunity (DEO), pursuant to Chapter 9J-1 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this Resolution until the appeal is resolved by agreement or order.

Motion to adopt by Councilmember Mark Gregg, second by Mayor Joseph B. Pinder.

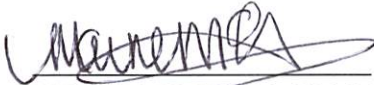
FINAL VOTE AT ADOPTION

Mayor Joseph B. Pinder III	YES
Vice Mayor Sharon Mahoney	YES
Councilman Mark Gregg	YES
Councilman Henry Rosenthal	YES
Councilwoman Elizabeth Jolin	YES

PASSED AND ADOPTED on the second reading this 13th day of April, 2023.


JOSEPH B. PINDER III, MAYOR

ATTEST:


MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY


JOHN J. QUICK, INTERIM VILLAGE ATTORNEY



RESOLUTION NO. 25-

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, RECONSIDERING ADMINISTRATIVE APPEAL NO. PLADA20230026 FILED BY SMITH HAWKS, PL (AGENT) ON BEHALF OF WHAT A GOOD CATCH LLC (APPELLANT) RELATING TO AN ADMINISTRATIVE DECISION AND INTERPRETATION BY THE DIRECTOR OF PLANNING (DENIAL OF A TRANSFERABLE DEVELOPMENT RIGHT) FOR PROPERTY LOCATED AT 81912 OVERSEAS HWY (REAL ESTATE NUMBER 00399300-00000) AND 82601 OLD HIGHWAY (REAL ESTATE NUMBER 00401260-000000), ON UPPER MATECUMBE KEY, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS LEGALLY DESCRIBED HEREIN; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF COMMERCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ty Harris, PA ("Representative") on behalf of After Hours Inc ("Owner") applied for Minor Conditional Use Permit for the Transfer of Development Right ("TDR") ("Application") pursuant to Section 30-503 of the Code of Ordinances Islamorada, Village of Islands, Florida on January 4, 2023, to transfer one (1) TDR from the real property located at 81912 Overseas Highway, Upper Matecumbe, Florida, having Parcel ID 00399300-000000 ("Sender Site") to the real property located at 82601 Old Highway, Upper Matecumbe, Florida, having Parcel ID 0040126-000000 (the "Receiver Site"); and

WHEREAS, the Director of Planning sent notice of denial for TDR application PLTDR20230001 to the owner's representative via email on January 27, 2023; and

WHEREAS, on February 3, 2023, Barton W. Smith ("Agent") submitted an Administrative Appeal on behalf of What a Good Catch ("Applicant"), appealing the Planning Director's decision to deny the application for Transfer of Development Rights; and

WHEREAS, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on March 2, 2023; and

WHEREAS, the Village Council tabled the hearing on March 2, 2023 to a date certain hearing date for April 13, 2023; and

WHEREAS, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on April 13, 2023; and

WHEREAS, the Village Council approved with conditions the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on April 13, 2023; and

WHEREAS, Resolution 23-04-45 was recorded in Monroe County Clerk of Courts on April 27, 2023; and

WHEREAS, no appeals were filed within the time allowed; and

WHEREAS, on July 24, 2025 the Agent requested reconsideration by the Village Council on Resolution 23-04-45 approving the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights; and

WHEREAS, on July 24, 2025 the Village Council voted to waive its procedures to allow for the reconsideration; and

WHEREAS, the Village Council conducted a duly noticed Public Hearing regarding the reconsideration of Resolution 23-04-45 approving the Request to Appeal the Planning Director's decision to deny the application for Transfer of Development Rights on September 11, 2025; and

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Findings of Fact.

The Village Council, having considered the testimony and evidence presented by all parties, including Village Staff, does hereby find and determine:

(1) The Application for a Transfer of Development Rights [meets/does not meet] the requirements set forth in the Village Code, Chapter 30, Article IV, Division 12 – Transfer of Development Rights and [has/has not] demonstrated through competent substantial evidence that the criteria for granting the Request [have/have not] been met.; and

(2) The applicant has met the standards for an Administrative Appeal of the denial of the proposed Transfer of Development Rights contained within Sec. 30-281 (Administrative Appeals) of the Village Code.; and

(3) The Village Council [approves/denies] the Request submitted by the Agent on behalf of the Applicant.

Section 3. Conclusions of Law.

Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

(1) The Request has been processed in accordance with the Village Comprehensive Plan and the Code; and

(2) In rendering its decision, as reflected in this Resolution, the Village Council has:

- (a) Accorded procedural due process; and
- (b) Observed the essential requirements of the law; and
- (c) Supported its decision by competent substantial evidence contained within the record; and
- (d) Imposed the following conditions:
 - 1. The property owner shall enhance the existing hammock on the receiver site subject to the satisfaction of the Village biologist.
 - 2. The final footprint of the restored hammock on the receiver site shall be placed into a conservation easement subject to the satisfaction of the Village biologist. The restored hammock will be monitored by 5 years and shall remain intact based on survival rates to the satisfaction of the Village.
 - 3. If the restored hammock on the receiver site is destroyed, it shall be replanted and subject to all of the enforcement mechanisms of the Village.
 - 4. The proposed single-family residence will be consistent with the plans submitted to the Village in connection with the pending Building Permit Allocation System (BPAS) application.

Section 4. **Approval.** The Village Council hereby approves this Resolution, which repeals Resolution No. 23-04-45 and any further amendments thereto.

Section 4. Effective Date.

This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this resolution shall not be effective or acted upon by the Applicant until forty-five (45) days following the rendition to the Department of Commerce (DOC), pursuant to Chapter 9J-1 of the Florida Administrative Code. During those forty-five (45) days, the DOC may appeal this resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this Resolution until the appeal is resolved by agreement or order.

Motion to adopt by _____, second by _____.

FINAL VOTE AT ADOPTION

Mayor Sharon Mahoney	_____
Vice Mayor Don Horton	_____
Councilman Steve Friedman	_____
Councilwoman Deb Gillis	_____
Councilwoman Anna Richards	_____

PASSED AND ADOPTED on the second reading this 11th day of September, 2025.

SHARON MAHONEY

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, INTERIM VILLAGE ATTORNEY