

CONSERVATION EASEMENT

OFF REC 0809 PAGE 1273

K THIS DEED OF CONSERVATION EASEMENT, is given this 22nd day of February, 2002 by MATANZAS SHORES OWNER'S ASSOCIATION, INC., a Florida not-for-profit corporation whose mailing address is P.O. Box 352572, Palm Coast, FL 32135 ("Grantor") to the Florida Fish and Wildlife Conservation Commission, a public entity of the State of Florida, with its principal office at 620 South Meridian Street, Tallahassee, FL 32399-1600 ("Grantee").

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Flagler County, Florida hereinafter referred to as the "Property", more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, the Grantor desires to protect and conserve certain upland preserve areas; and

WHEREAS, the Grantor, in consideration of the consents of the Grantee to Permit No. FLG 11 issued by the Grantee on 28 February 2002 ("Permit") in favor of the Grantor for the incidental take of listed wildlife species, is required to grant and secure the enforcement of a perpetual conservation easement as defined in Section 704.06 Florida Statutes, over the Property.

NOW THEREFORE, consistent with the issuance of the Permit, Grantor hereby grants, creates, and establishes a perpetual conservation easement upon the Property described in Exhibit "A", attached and incorporated herein by reference, which shall run with the land and be binding upon the Grantor, its heirs, successors and assigns, and remain in full force and effect forever.

1. The scope, nature, and character of this conservation easement is to ensure that protected and/or uplands preserve areas shall be used as conservation areas pursuant to Section 704.06, Florida Statutes, consistent with the Property's Habitat Management Plan, dated February 22, 2002 ("Plan"). A copy of the Plan is attached hereto as Exhibit "B", and incorporated herein by reference. To carry out this purpose the following rights are conveyed to the Grantee by Grantor through this easement:

a. To enter upon the Property at reasonable times to enforce the rights herein granted upon prior notice to Grantor, its heirs, successors or assigns, in a manner that shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its heirs, successors or assigns at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with the purpose of this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Grantor reserves to itself, its heirs, successors or assigns all rights as owner of the Property including the right to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this conservation easement as set forth in Section 704.06, Florida Statutes. Unless expressly authorized under Exhibit B, the following are prohibited activities:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- b. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- c. Removal or destruction of trees, shrubs, or other vegetation.
- d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.
- e. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- g. Acts or uses detrimental to such retention of land or water areas.
- h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or culture significance.
- i. Alternation of the preserve areas except in compliance with the Plan.

3. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.

4. Grantor agrees to bear all reasonable costs related to the operation, upkeep and maintenance of the Property.

5. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property.

6. Grantor intends that enforcement of the terms and provisions of the conservation easement and the Plan shall be at the discretion of Grantee and that any forbearance on behalf of

Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, its heirs, successors, personal representatives or assigns shall not be deemed or construed to be a waiver of Grantee's rights hereunder in the event of a subsequent breach.

7. Grantee agrees that it will hold this conservation easement exclusively for conservation purposes and that it will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws and committed to holding this conservation easement exclusively for conservation purposes. Not later than thirty (30) days after recordation in the Public Records of Flagler County, Florida of title to the property which is the subject of this easement, Grantor agrees to give written notice to Grantee of such transfer.

8. If any provision of this conservation easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this conservation easement, and the applications of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

9. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest, at the addresses above set forth or such new addresses as either party may in writing deliver to the other.

10. This conservation easement may be amended, altered, released or revoked only by written agreement between the parties hereto, their successors or assigns.

11. Grantor agrees that if the Property is subject to a mortgage or any form of security, Grantor shall provide documentation to verify that such mortgage or security interest is subordinate to this Conservation Easement and such verification shall be provided and recorded prior to execution of this easement.

12. This Easement shall be recorded in the same manner as any other instrument asserting title to real property.

TO HAVE AND TO HOLD unto Grantee, its respective successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this easement shall not only be binding upon Grantor but also its agents, personal representatives, heirs, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF Grantor has set its hand on the day and year first above

IN WITNESS WHEREOF Grantor has set its hand on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

MATANZAS SHORES OWNER'S
ASSOCIATION, INC., a Florida not-for-
profit corporation

Name: GREG ROBINSON
Name: LARRY KINCAID

By: _____
Name: William Perkins
Title: PRES

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 22 day of FEBRUARY, 2002 by William Perkins, the PRESIDENT of Matanzas Shores Owner's Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. The above-named individual is personally known to me or produced as identification and did not take an oath.



Judith Kincaid
Notary Public - State of Florida
Commission No: CC 949198
Commission Expires: 6-26-04

GRANTEE'S ACCEPTANCE

The Florida Fish and Wildlife Commission hereby approves the foregoing Deed of Conservation Easement and agrees to all of the terms and provisions thereof.

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

By: Victor J. Hella

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Gregory J. Hout
Commission Attorney

The following legal description prepared by Clyde W. Roesch, Palm Coast Engineering and Design Services, Inc. 5 Hargrove Grade, Palm Coast, Florida.

Date: October 13, 1994.

Scrub Jay Habitat / Conservation Lands, Matanzas Shores.

LEGAL DESCRIPTION:

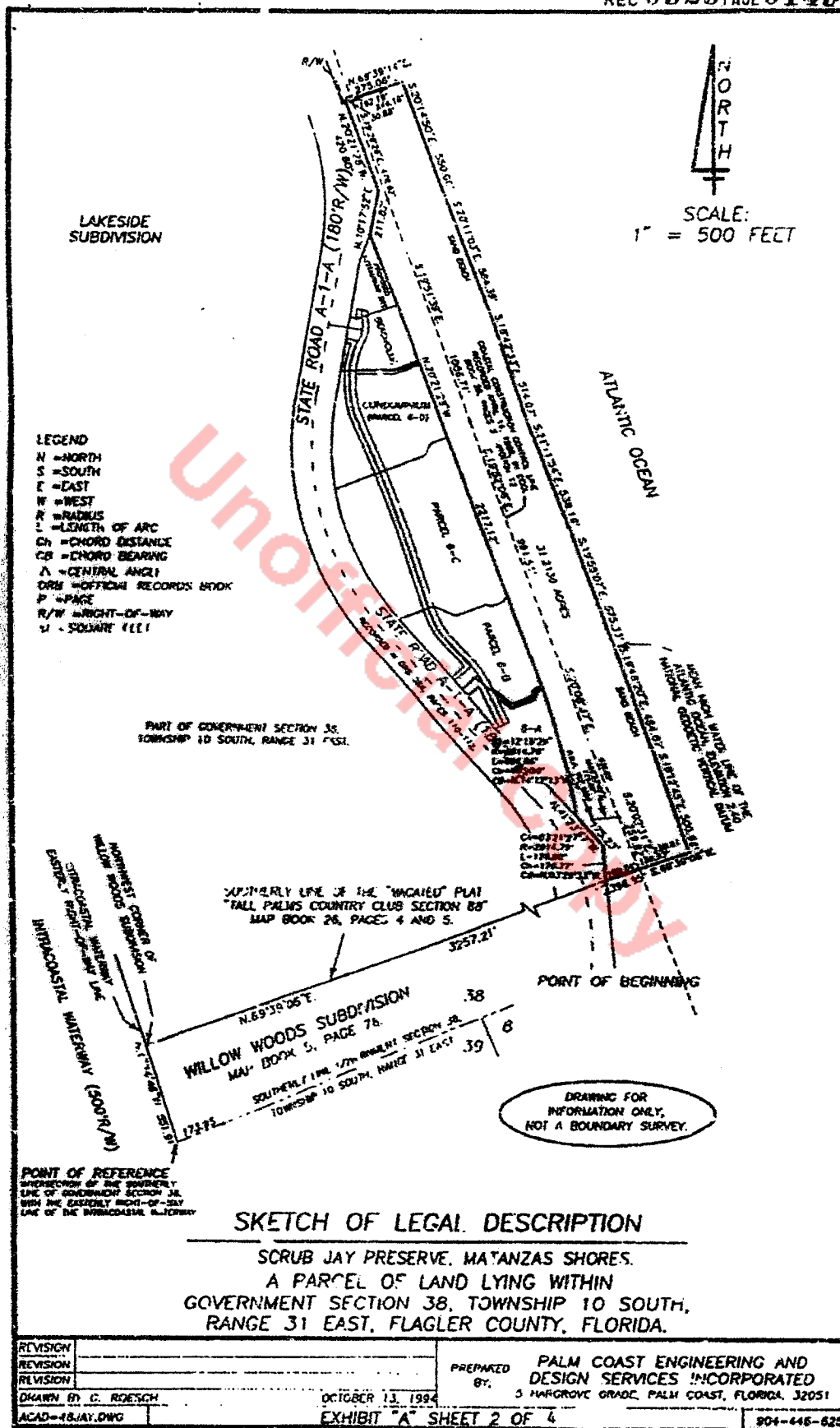
A PARCEL OF LAND LYING IN GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH, RANGE 31 EAST, BEING A PORTION OF THE "SUBDIVISION PLAT SECTION 88, PALM COAST" RECORDED IN MAP BOOK 26, PAGES 4 AND 5 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

A POINT OF REFERENCE being the intersection of the Southerly line of said Government Section 38 with the Easterly right-of-way of the Intracoastal Waterway (500' R/W); thence North $17^{\circ}14'46''$ West along said right-of-way a distance of 551.91 feet to a Point being the Northwest corner of "Willow Woods Subdivision" recorded in Map Book 5, Page 76, thence departing said Intracoastal Waterway North $69^{\circ}39'06''$ East along the common boundary of said "Willow Woods" and said "Section 88, Palm Coast" a distance of 3257.21 feet to a Point on a curve on the Easterly right-of-way line of State Road A-1-A (R/W varies) said Point being the POINT OF BEGINNING of this description, thence departing the Southerly boundary line of Section 88 Northerly 170.80 feet along said right-of-way and curve to the left having a central angle of $03^{\circ}21'27''$, a radius of 2914.79 feet, a chord bearing of North $03^{\circ}20'33''$ West and a chord distance of 170.77 feet, thence departing said curve North $41^{\circ}23'47''$ West a distance of 175.23 feet to a Point on a curve, thence Northerly 604.66 feet along a curve to the left (concave Westerly) having a central angle of $12^{\circ}18'29''$, a radius of 2814.79 feet, a chord bearing of North $14^{\circ}12'13''$ West and a chord distance of 603.50 feet to a Point of tangency, thence North $20^{\circ}21'28''$ West a distance of 2217.12 feet to a Point on the Easterly right-of-way line of State Road A-1-A, thence North $10^{\circ}17'52''$ East along said right-of-way a distance of 211.82 feet thence North $20^{\circ}21'28''$ West a distance of 420.80 feet to a Point on the Northerly boundary line of said Subdivision Section 88, thence departing State Road A-1-A North $69^{\circ}39'14''$ East a distance of 275.06 feet to a point on the Mean High Water Line of the Atlantic Ocean, thence Southerly along said Mean High Water Line the following courses, South $20^{\circ}14'50''$ East a distance of 557.00 feet, thence South $20^{\circ}11'03''$ East a distance of 584.39 feet, thence South $18^{\circ}42'33''$ East a distance of 514.07 feet, thence South $21^{\circ}11'54''$ East a distance of 538.16 feet, thence South $19^{\circ}55'07''$ East a distance of 575.33 feet, thence South $19^{\circ}48'27''$ East a distance of 484.87 feet, thence South $18^{\circ}12'45''$ East a distance of 500.96 feet, thence departing said Mean High Water Line South $69^{\circ}39'06''$ West along the Southerly boundary of said Subdivision Plat Section 88 a distance of 396.85 feet to the POINT OF BEGINNING.

The above description is accompanied by an attached drawing titled "SKETCH OF LEGAL DESCRIPTION".

Parcel containing 31.2130 acres more or less.

Bearings refer to the Transverse Mercator Grid System of the East Zone of Florida and locally referenced to the South line of Government Section 38, Township 10 South, Range 31 East, being North $67^{\circ}46'01''$ East.



The following Legal Description prepared by Clyde W. Roesch, Palm Coast Engineering and Design Services, Inc. 5 Hargrove Grade, Palm Coast, Florida.

Date; October 13, 1994.

Hammock Parcel / Conservation lands, Matanzas Shores.

A parcel of land lying in Government Section 38, Township 10 South, Range 31 East, being a portion of the "Subdivision Plat Section 88, Palm Coast" Recorded in Map Book 26, Pages 4 and 5 of the Public Records of Flagler County, Florida, being more particularly described as follows:

A POINT OF REFERENCE being the intersection of the Southerly line of said Government Section 38 extended Westerly to the Easterly right-of-way of the Intracoastal Waterway (500' R/W), thence North 17°14'46" West along said right-of-way 551.91 feet to a Point being the Northwest corner of "Willow Woods Subdivision" recorded in Map Book 5, Page 76, thence departing said Intracoastal Waterway North 69°39'06" East along the common boundary of said "Willow Woods" and said "Section 88, Palm Coast" 634.55 feet to the POINT OF BEGINNING or the following description, thence departing said boundary North 17°44'00" West a distance of 120.10 feet, thence North 47°18'08" West a distance of 339.54 feet, thence North 16°58'50" West a distance of 479.79 feet, thence North 67°46'01" East a distance of 445.21 feet, thence North 19°56'16" West a distance of 2731.94 feet, thence South 69°39'14" West a distance of 668.95 feet to a Point on the Mean High Water Line (elevation 1.34 National Geodetic Vertical Datum) of the Easterly shore of the Matanzas River, thence along said Mean High Water Line as interpolated by elevation the following courses thence North 07°36'30" West a distance of 88.37 feet, thence North 04°41'14" East a distance of 149.03 feet, thence North 15°21'39" West a distance of 257.34 feet, thence North 05°42'44" West a distance of 74.84 feet to a Point on the Northerly boundary line of said Section 88, Map Book 26, Pages 4 and 5, said Point having an elevation of 1.45 feet National Geodetic Vertical Datum, thence departing the Matanzas River North 69°39'14" East along the Northerly boundary line of said Section 88 a distance of 1445.95 feet, thence South 27°56'43" East a distance of 184.38 feet, thence South 15°44'20" East a distance of 729.20 feet, thence South 18°10'12" East a distance of 205.50 feet, thence South 11°38'36" East a distance of 541.07 feet, thence South 03°11'58" East a distance of 161.12 feet, thence South 13°39'48" East a distance of 189.07 feet, thence South 37°11'05" West a distance of 58.85 feet, thence South 05°53'57" East a distance of 61.92 feet, thence South 16°09'45" East a distance of 343.35 feet, thence South 00°58'56" East a distance of 175.68 feet, thence South 04°02'06" East a distance of 142.83 feet, thence South 21°56'42" East a distance of 221.43 feet, thence South 06°54'13" East a distance of 226.07 feet, thence South 00°32'35" West a distance of 208.59 feet, thence South 42°47'07" East a distance of 125.54 feet, thence South 37°11'25" East a distance of 290.81 feet, thence South 23°14'42" West a distance of 163.43 feet, thence South 21°13'05" East a distance of 272.50 feet to a Point on the Southerly boundary line of Section 88, thence South 69°39'06" West along said boundary line a distance of 753.95 feet to the POINT OF BEGINNING.

Subject to an easement to the Florida Department of Natural Resources being a strip of land two (2) feet in width lying Easterly of, adjacent and parallel to the Mean High Water Line of the Matanzas River.

The above description is accompanied by an attached drawing titled "SKETCH OF LEGAL DESCRIPTION".

Parcel containing 74.3480 acres more or less.

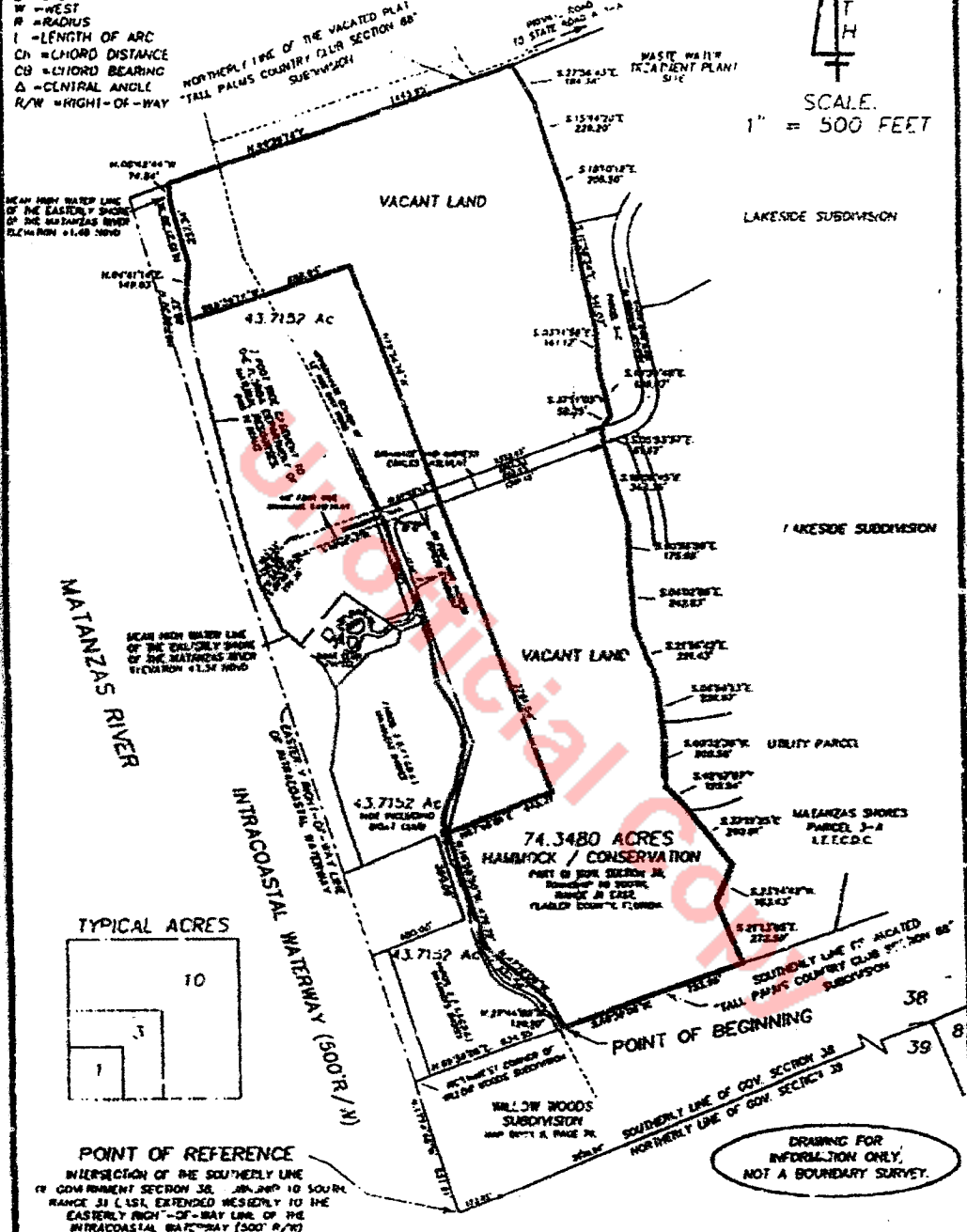
Bearings refer to the Transverse Mercator Grid System of the East Zone of Florida and locally referenced to the South line of Government Section 38, Township 10 South, Range 31 East, being South 67°46'01" West.

LEGEND

N = NORTH
S = SOUTH
E = EAST
W = WEST
R = RADIUS
L = LENGTH OF ARC
Ch = CHORD DISTANCE
CB = CHORD BEARING
Δ = CENTRAL ANGLE
R/W = RIGHT-OF-WAY



SCALE
1" = 500 FEET



SKETCH OF LEGAL DESCRIPTION

HAMMOCK PARCEL / CONSERVATION LANDS AT MATANZAS SHORES
BEING A PARCEL OF LAND LYING WITHIN
GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH,
RANGE 31 EAST, FLAGLER COUNTY, FLORIDA.

REVISION		PREPARED BY	PALM COAST ENGINEERING AND DESIGN SERVICES INCORPORATED
REVISION		BY	13 HARGROVE GRADE, PALM COAST, FLORIDA 32051
REVISION			
DRAWN BY C. ROESCH	OCTOBER 13, 1994		
ACAD=46HAM1.DWG	EXHIBIT "A" SHEET 4 OF 4		904-448-6250

DRAWING FOR
INFORMATION ONLY.
NOT A BOUNDARY SURVEY.

Exhibit B**Matanzas Shores DRI
Beach-side Preserve Management Plan**Preserve Area Description

The scrub area previously preserved during the DRI approvals consists of approximately 31 acres. Approximately 19.4 acres is coastal scrub which runs north and south adjacent to the beach dune. The coastal scrub area supports palmetto with at least 15% scrub oaks. Additionally, approximately 6.4 acres of the old SR A1A roadbed is included in the preserve. Over the years, several species of cacti (*Opuntia* sp.), a favorite food for the gopher tortoise, have colonized this grassy road bed. The remainder of the preserve (approximately 5 acres) includes the beach area from the toe of dune down to the mean high water line.

Habitat Management Objectives

There are three primary objectives for the additional management of the preserve area: mechanical thinning of the scrub habitat, the creation of additional isolated openings within the scrub and the replanting of scrub oaks on the old SR-A1A. Management of the preservation area will be done in perpetuity as required in the DO, regardless of whether jays stay in the area. Management activities have already begun in accordance with the existing Development Order. Initiation of the on-site mitigation beyond the scope of the original management plan will also be initiated to establish these improvements prior to the loss of any existing habitat to minimize impacts to the scrub-jays.

Mechanical Thinning of the Scrub

Currently, the scrub within the preserve is overgrown with thick patches of saw palmetto with few sandy breaks that are beginning to fill in with vegetation. Some portions of the preserve area need to be managed to be considered optimal scrub-jay habitat. In order to increase the mix of open ground and patches of oak through management, the preserve area should be divided into three management cells including the newly exposed SR-A1A roadbed.

These cells will be divided by the existing dune walkovers. Cell 1 will be the southern most cell, Cell 2 will be the middle cell, and Cell 3 will be the northern most cell (See Mitigation Plan, Figure 5, Appendix A). Initially, Cell 3 will be mechanically thinned with a roller chopper. In three (3) years, Cell 2 would then be thinned, and in another three (3) years Cell 1 would be thinned. This rotation was chosen because the Cell1 habitat is still in good condition which is why the jays are currently utilizing this area for nesting. The management rotation will serve to create successional stages within the preservation area

scrub. Once the first sequence is complete, the rotating sequence shall be every ten years (i.e. Cell 3 would be thinned again in 2012, Cell 2 would be thinned again in 2015, and Cell 1 in 2018) as outlined in the Maintenance Schedule, below. In addition, seven openings the width of the roller chopper or gyro-trac performing the thinning will be spaced evenly in Cells 1 and 2 during the management of Cell 3 to further open the habitat for gopher tortoises.

This plan would provide for a variety of habitat stages that will benefit the scrub-jays and any other protected species with the potential to occur in coastal scrub habitat as well as all other species of wildlife. Prior to mechanical treatment with a roller chopper, the applicant will have a survey for listed species and nests performed. If species such as gopher tortoise or indigo snake are found the mechanical treatment will be halted until they move out of the cell.

Maintenance Schedule

Phase I Maintenance:

Wherever possible, the larger healthy scrub oaks, myrtles and palms will be left undisturbed. All other areas will be maintained with a roller chopper or gyro-trac. Additional open sandy areas of 0.1 acre will be added to each cell, and a 15' to 20' buffer between the dune (CCCL) and maintenance area as well as any large oaks, myrtles and palms near the existing condo building and clubhouse will not be thinned.

Cell#3 - Thin and create open spaces and thin 7 transects in Cells 1 and 2 by March 2002

Cell#2 - Thin and create open spaces by March 2005

Cell#1 - Thin and create open spaces by March 2008

Phase II Follow-up Maintenance:

Cell#3 - Re-thin and maintain open spaces and existing fire access cuts by March 2012

Cell#2 - Re-thin and maintain open spaces and existing fire access cuts by March 2015

Cell#1 - Re-thin and maintain open spaces and existing fire access cuts by March 2018

Scrub Restoration and Creation of New Sandy Areas

In the old SR A1A roadbed, grass will be removed in three 0.10 acre areas, one in each cell, while the rest of the old roadbed will be planted with scrub oaks (see planting schedule, below). The oaks will be planted in small islands or clumps that will be spaced evenly through the roadbed. Leaving the grass in the areas to be planted will result in better survivability of the material to be planted and will continue to provide forage material for the resident gopher tortoise population.

In addition to the work in the old SR A1A roadbed, two small openings (approximately 0.10 acre each) will be cleared in each of the three management areas using a small piece

of earthmoving equipment (see Mitigation Map). These areas will be cleared on the back side (west) of the dune to preserve the front dune integrity. This activity will be performed within 90 days of permit issuance.

Old SR A1A Roadbed Planting Schedule

Cell#3 - approximately 610 myrtle oaks in late winter/early spring 2003

Cell#2 - approximately 890 myrtle oaks in late winter/early spring 2006

Cell#1 - approximately 610 myrtle oaks in late winter/early spring 2009

Delineation of the Preserve Edge Before Construction

The western boundary of the preserve will be staked and roped off prior to land clearing to insure that no encroachment into the preserve will occur during construction. The staking will be temporary and removed after construction is completed.

Education

The Development Order requires that educational materials be distributed to educate residents about scrub-jays and their habits. Educational materials, currently available at the club house, have heightened residents' awareness of the scrub-jays. The educational measures will continue and be available to new residents (sample enclosed, Appendix E). Similar educational materials will be provided in the construction trailer during the construction of the project.

With the close proximity of the preserve, and the existing and proposed condominiums, there is a possibility of disturbing the scrub-jays within the preserve areas due to stray dogs and cats. The current management plan requires all pets to be maintained on leashes at all times. Any stray pets are to be removed by hand or trapped immediately. The Property Manager will notify Flagler County Animal Control when unleashed or stray pets are observed. Residents also provide self-policing of the development in this regard.